

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2025

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WEST VIRGINIA HOUSE OF DELEGATES
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SPEAKER OF THE HOUSE

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CHAPTER 131

(S. B. 856 - By Senator Rucker)

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]

[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §23-2C-5, §23-4-1f, §33-2-15a, and §33-2-21a of the Code of West Virginia, 1931, as amended; and to repeal §23-1-2, §23-1-17, §33-20-19, §33-20B-6, and §33-20B-8, relating to the repeal or modification of reporting requirements; removing the reporting requirement of the Insurance Commissioner to the Joint Committee on Government and Finance regarding workers' compensation funds; removing the reporting requirement of the Insurance Commissioner and Occupational Pneumoconiosis Board to the Governor regarding occupational pneumoconiosis claims; removing the reporting requirement of the Industrial Council to the Joint Committee on Government and Finance regarding employer safety initiatives; removing the reporting requirement of employers to the Insurance Commissioner regarding post-traumatic stress disorder claims; removing the reporting requirement of the Insurance Commissioner to the Joint Committee of Volunteer Fire Department and Emergency Medical Services regarding post-traumatic stress disorder claims; requiring the Insurance Commissioner to post a flood insurance notification to public entities on the agency's website; removing the reporting requirement of the Insurance Commissioner to the Joint Committee on Government and Finance regarding the status of the state agency workers' compensation program; removing the publishing requirement of the Insurance Commissioner regarding automobile insurance rates; removing the reporting requirement of the Insurance Commissioner to the Joint Standing Committee of the Judiciary regarding medical malpractice insurance; and

removing the reporting requirement of insurance companies to the Insurance Commissioner regarding civil actions filed against medical providers.

Be it enacted by the Legislature of West Virginia:

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

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[Repealed.]

§23-1-17. Annual report by the Insurance Commissioner and Occupational Pneumoconiosis Board.

[Repealed.]

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-5. Creation of the industrial council; duties.

(a) There is hereby created within the Office of the Insurance Commissioner an industrial council.

(b) On or before July 1, 2005, the Governor, with the advice and consent of the Senate, shall appoint five voting members to the industrial council who meet the requirements and qualifications prescribed in this subsection. Two members of the West Virginia Senate and two members of the West Virginia House of Delegates shall serve as advisory nonvoting members of the board. The Governor shall appoint the legislative members to the board. No more than three of the legislative members may be of the same political party. The Insurance Commissioner shall serve as an advisory nonvoting member of the board.

(1) (A) Five members shall be appointed by the Governor with the advice and consent of the Senate for terms that begin upon appointment after the effective date of this legislation and expire as follows:

(i) One member shall be appointed for a term ending June 30, 2007;

(ii) Two members shall be appointed for a term ending June 30, 2008; and

(iii) Two members shall be appointed for a term ending June 30, 2009.

(B) Except for appointments to fill vacancies, each subsequent appointment shall be for a term ending June 30 of the fourth year following the year the preceding term expired. In the event a vacancy occurs, it shall be filled by appointment for the unexpired term. A member whose term has expired shall continue in office until a successor has been duly appointed and qualified. No member of the council may be removed from office by the Governor except for official misconduct, incompetency, neglect of duty, or gross immorality.

(C) No appointed member may be a candidate for or hold elected office. Members may be reappointed for no more than two full terms.

(2) Each of the appointed voting members of the council shall be appointed based upon his or her demonstrated knowledge and experience to effectively accomplish the purposes of this chapter. They shall meet the minimum qualifications as follows:

(A) Each shall hold a baccalaureate degree from an accredited college or university: *Provided*, That no more than one of the appointed voting members may serve without a baccalaureate degree from an accredited college or university if the member has a minimum of 15 years' experience in his or her field of expertise as required in this subdivision;

(B) Each shall have a minimum of 10 years' experience in his or her field of expertise. The Governor shall consider the following guidelines when determining whether potential candidates meet the qualifications of this subsection: Expertise in insurance claims management; expertise in insurance underwriting; expertise in the financial management of pensions or insurance plans; expertise as

a trustee of pension or trust funds of more than 200 beneficiaries or \$300 million; expertise in workers' compensation management; expertise in loss prevention and rehabilitation; expertise in occupational medicine demonstrated by licensure as a medical doctor in West Virginia and experience, board certification, or university affiliation; or expertise in similar areas of endeavor;

(C) At least one shall be a certified public accountant with financial management or pension or insurance audit expertise; at least one shall be an attorney with financial management experience; one shall be an academician holding an advanced degree from an accredited college or university in business, finance, insurance, or economics; and one shall represent organized labor;

(D) The council shall appoint one member to serve as chairperson. The chairperson shall serve for a one-year term and may serve more than one consecutive term. The council shall hold meetings at the request of the chairperson or at the request of at least three of the members of the council, but no less frequently than once every three months. The chairperson shall determine the date and time of each meeting. Three members of the council constitute a quorum for the conduct of the business of the council. No vacancy in the membership of the council shall impair the right of a quorum to exercise all the rights and perform all the duties of the council. No action shall be taken by the council except upon the affirmative vote of three members of the council.

(3)(A) Each voting appointed member of the council shall receive compensation of not more than \$350 per day for each day during which he or she is required to and does attend a meeting of the board.

(B) Each voting appointed member of the council is entitled to be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the Travel Management Office of the Department of Administration.

(C) Each member of the council shall be provided appropriate liability insurance, including, but not limited to, errors and omissions coverage, without additional premium, by the state Board of Risk and Insurance Management established pursuant to §29-12-1 *et seq.* of this code.

(c) The industrial council shall:

(1) In consultation with the Insurance Commissioner, establish operating guidelines and policies designed to ensure the effective administration of the workers' compensation insurance market in West Virginia.

(2) Review and approve, reject or modify rules that are proposed by the Insurance Commissioner for operation and regulation of the workers' compensation insurance market before the rules are filed with the Secretary of State. The rules adopted by the industrial council are not subject to §29A-3-9 through §29A-3-16 of this code. The industrial council shall follow the remaining provisions of said chapter for giving notice to the public of its actions and for holding hearings and receiving public comments on the rules.

(3) In accordance with the laws and rules of West Virginia, establish and monitor performance standards and measurements to ensure the timeliness and accuracy of activities performed under chapter 23 of this code and applicable rules.

(4) Submit for approval by the Legislature, as an isolated and clearly discernable component of the Insurance Commissioner's budget, a budget for the sufficient administrative resources and funding requirements necessary for their duties under this article.

(5) Perform all record and information gathering functions necessary to carry out its duties under this code.

(6) Perform all other duties as specifically provided in this chapter for the industrial council and those duties incidental thereto.

(7) Establish a method of indexing claims of injured workers that will make information concerning the injured workers of one insurer available to other insurers.

(A) Every insurer shall provide information, as required by the industrial council, for establishing and maintaining the claims index.

(B) If an employee files a claim with an insurer, the insurer is entitled to receive from the administrator a list of the prior claims of the employee. If the insurer desires to inspect the files related to the prior claims, he or she must obtain the written consent of the employee or the Insurance Commissioner or his or her designee. The use of the information contained in the files is limited to the administration of the claim.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

***§23-4-1f. Certain psychiatric injuries and diseases not compensable; definitions; legislative findings; terms.**

(a) Except as provided by this section, for the purposes of this chapter, no alleged injury or disease may be recognized as a compensable injury or disease which was solely caused by nonphysical means and which did not result in any physical injury or disease to the person claiming benefits. Except as otherwise provided in this section, it is the purpose of this section to clarify that so-called mental-mental claims are not compensable under this chapter.

(b) For the purposes of this section:

(1) "First responder" means a law-enforcement officer, firefighter, emergency medical technician, paramedic, and emergency dispatcher.

(2) "Post-traumatic stress disorder" means a disorder that meets the diagnostic criteria for post-traumatic stress disorder specified by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, fifth edition, or a later edition as adopted by rule of the Insurance Commissioner; and

***NOTE:** This section was also amended by S. B. 856 (Chapter 131), which passed prior to this Act.

(3) "Licensed mental health provider" means a psychiatrist, psychologist, licensed professional counselor, licensed marriage and family therapist, or licensed social worker who is qualified to treat post-traumatic stress disorder.

(4) "Employer" means any entity that controls, consistent with the provisions of West Virginia law relating to an employment relationship, the paid or volunteer employment of a first responder eligible for benefits under this section.

(c) The Legislature finds that post-traumatic stress disorder is a unique medical condition. Although it may manifest itself as a psychiatric condition that would be otherwise precluded from workers' compensation coverage, post-traumatic stress disorder is an occupational hazard for first responders, similar to members of the military serving in combat. The Legislature further finds that because first responders are required to expose themselves to traumatic events during the course of their employment and thus are at a recognized higher risk of developing post-traumatic stress disorder, and because of the severe nature and debilitating effects of post-traumatic stress disorder, it is the moral obligation of the state to permit coverage to this class of individuals for their work-related disease.

(d)(1) Post-traumatic stress disorder suffered by a first responder may be recognized as a compensable occupational disease under §23-4-1(f) of this code when:

(A) The employer has elected to provide coverage for post-traumatic stress disorder as an occupational disease; and

(B) A diagnosis has been made by a licensed psychiatrist that the first responder suffered from post-traumatic stress disorder due to exposure to an event or events that occurred in the course of and resulting from the first responder's paid or volunteer covered employment: *Provided*, That the provisions of this section shall apply only to a post-traumatic stress disorder diagnosis made on or after July 1, 2021, or the first day of the employer's next workers' compensation insurance policy or self-insurance program term for which post-traumatic stress disorder coverage has been purchased or elected, whichever is later.

(2) While the diagnosis must be made by a licensed psychiatrist, mental health treatment consistent for a post-traumatic stress disorder diagnosis may be offered by a licensed mental health provider other than the diagnosing psychiatrist.

(3) A diagnosis of post-traumatic stress disorder under this section shall not include consideration of any layoff, termination, disciplinary action, or any similar personnel-related action taken in good faith by an employer.

(4) Benefits for a post-traumatic stress disorder diagnosis made under this section are contingent upon the employer electing to provide coverage for post-traumatic stress disorder from its workers' compensation insurance carrier or to provide for it through its self-insurance program, whichever is applicable.

(5) The receipt of benefits is contingent on a claim being made within three years from and after a licensed psychiatrist has made the claimant aware of a post-traumatic stress disorder diagnosis in accordance with this section.

(e) The amendments made to this section during the 2021 regular session of the Legislature to recognize post-traumatic stress disorder as a compensable injury subject to the provisions of this section shall expire on July 1, 2026, unless extended by the Legislature.

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-15a. Annual flood insurance notification to public entities by commissioner.

The commissioner shall annually post a notification on the agency's website with the following objectives:

(1) To make state and local governmental entities and nonprofit organizations aware of the 1988 amendments to the federal Robert T. Stafford Emergency Assistance and Disaster Relief Act which impose penalties in the form of reductions in Federal Emergency Management Agency disaster relief funds on public entities who fail to purchase adequate flood insurance on all property located in identified flood hazard areas;

(2) To make state and local governmental entities and nonprofit organizations generally aware of the magnitude of risk exposure and potential financial loss that may result from these penalties; and

(3) To make state and local governmental entities and nonprofit organizations aware that low-cost, federally subsidized flood insurance may be available through the National Flood Insurance Program.

§33-2-21a. State agency workers' compensation programs.

(a) The intent of this section is to provide a means of managing workers' compensation coverage for persons directly employed by the State of West Virginia. For the purposes of this section:

(1) "Discretionary participant" means the Parkways Authority, offices of the State Auditor, the State Treasurer, the Secretary of State, the Attorney General, the Department of Agriculture, the State Senate and House of Delegates or their related entities, the Supreme Court of Appeals, the State Police, and any other spending unit of the state that is required by §11B-2-12 of this code to provide a detailed expenditure schedule to the Secretary of Revenue in his or her capacity as Director of the Budget: *Provided*, That the term "discretionary participant" does not include any executive state entity other than the State Police and the Parkways Authority, any county board of education, any other county entity or its instrumentality, or any municipality or its instrumentality.

(2) "Executive state entity" means the Governor's Office and its affiliated entities, Bureau of Senior Services, or any state department, division, fund, office, position, system, survey, or other entity of state government, however designated, transferred to and incorporated in one of the executive departments created in §5F-1-2 of this code, except the State Police, and that is required by §11B-2-12 of this code to provide a detailed expenditure schedule to the Secretary of Revenue in his or her capacity as Director of the Budget.

(b) Notwithstanding any provision of this code to the contrary, the commissioner has sole responsibility for managing the workers' compensation risks of all executive state entities and for supervising and controlling the workers' compensation programs for such entities: *Provided*, That any discretionary participant may participate in the program upon application to the commissioner under the same terms and conditions as are applicable to executive state entities: *Provided, however*, That a discretionary participant is, in accordance with rules governing the program, permitted to withdraw from continued participation in the program.

(c) The commissioner may assess such fees or surcharges on participants in the program necessary to manage the workers' compensation risks of those participants. All premiums, fees, and surcharges shall be established in accordance with generally acceptable actuarial standards applicable to workers' compensation coverage as to each participant and as to all participants in the aggregate. The commissioner shall establish criteria for assessments of premiums, fees, and surcharges designed to provide the most cost-efficient coverage for all participants.

(d) The provisions of §5A-3-1 *et seq.* of this code relating to the Purchasing Division of the Department of Administration do not apply to any contract entered into by the commissioner in furtherance of the requirements of this section: *Provided*, That those contracts shall be awarded on a competitive basis.

(e)(1) There is hereby established the State Entities Workers' Compensation Program Fund. All premiums, surcharges, assessments, deposits, or any other moneys or funds deposited or otherwise designated or accruing to the fund as well as all earnings payable to it, shall be deposited in the State Treasury to the credit of the fund. Expenditures from the fund shall be for the purposes set forth in this section, are authorized from collections, and shall not revert to the General Fund. The fund shall be a separate and distinct fund upon the books and records of the Auditor and Treasurer, and disbursements therefrom shall be made upon requisitions signed by the Insurance Commissioner.

(2) Any premiums, assessments or deposits or any other moneys or funds received for the purposes of this section shall be invested by the State Treasurer at the request of the commissioner.

(3) The Insurance Commissioner may borrow funds as is determined necessary from the Insurance Commission Fund, created in §33-3-13b of this code, for the initial operations of the workers' compensation program for state entities: *Provided*, That any borrowed funds shall be deposited to the credit of the State Entities Workers' Compensation Program Fund: *Provided, however*, That these borrowed funds shall be repaid, without interest, and redeposited to the credit of the Insurance Commission Fund as determined by the Insurance Commissioner.

(f) The commissioner may promulgate emergency rules and shall propose for legislative approval legislative rules, in accordance with the provisions of §29A-3-1 *et seq.* of this code, as are necessary to provide for implementation and enforcement of the provisions of this section.

(g) The commissioner shall consult with the State Board of Risk and Insurance Management to solicit any applicable experience and expertise in establishing and managing a program to provide insurance coverage to state agencies.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-19. Publication of automobile insurance rates.

[Repealed.]

ARTICLE 20B. RATES AND MALPRACTICE INSURANCE POLICIES.

§33-20B-6. Rate review and reporting.

[Repealed.]

§33-20B-8. Insurers required to report results of civil actions against physicians or podiatrists; penalties for failure to report; notice and hearing.

[Repealed.]

CHAPTER 132

(Com. Sub. for S. B. 861 - By Senator Rucker)

[Passed April 9, 2025; in effect 90 days from passage (July 8, 2025)]

[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §12-3-10e of the Code of West Virginia, 1931, as amended, relating to modifying the Purchasing Card Advisory Committee membership to revise the names of outdated titles for certain state entities and to reflect the consolidation of the Information Services and Communications Division into the Office of Technology.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. APPROPRIATIONS, EXPENDITURES, AND DEDUCTIONS.

§12-3-10e. Purchasing Card Advisory Committee created; purpose; membership; expenses.

(a) There is created a Purchasing Card Advisory Committee to enhance the development and implementation of the purchasing card program. The committee shall solicit input from state agencies and make recommendations to improve the performance of the Purchasing Card Program. The committee consists of 14 members to be appointed as follows:

(1) The Auditor shall serve as chairperson of the committee and shall appoint four members from the Community and Technical College System of West Virginia and the system of four-year higher education institutions, one member from the Department of Human Services, one member from the Division of Highways, and two additional members at large from any state agency;

(2) The Secretary of the Department of Administration shall appoint one member from the I Office of Technology, one member from the Financial Accounting and Reporting Section, and one member from the Purchasing Division;

(3) The Secretary of the Department of Revenue shall appoint one member from the Department of Revenue; and

(4) The State Treasurer shall appoint one member from that office.

(b) Committee members shall be appointed for a term of one year, commencing on July 1. Committee members shall receive reimbursement for expenses actually incurred in the performance of their duties on the committee.

CHAPTER 133

(S. B. 863 - By Senator Rucker)

[Passed April 9, 2025; in effect 90 days from passage (July 8, 2025)]

[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §5A-1-2 of the Code of West Virginia, 1931, as amended, relating to removing reference to the Information Services and Communications Division.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-2. Department of Administration and Office of Secretary; secretary; divisions; directors.

(a) The Department of Administration and the Office of Secretary of Administration are continued in the executive branch of state government. The secretary is the chief executive officer of the department and shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term not exceeding the term of the Governor.

(b) The Department of Administration may receive federal funds.

(c) The secretary serves at the will and pleasure of the Governor. The annual compensation of the secretary shall be as specified in §6-7-2a of this code.

(d) There shall be in the Department of Administration an Aviation Division, at the discretion of the secretary, a Finance Division, a Fleet Management Division, a General Services Division, Division of Personnel, and a Purchasing Division. Each

division shall be headed by a director who may also head any and all sections within that division and who shall be appointed by the secretary.

(e) There shall also be in the Department of Administration those agencies, boards, commissions, and councils specified in §5F-2-1 of this code.

CHAPTER 134

**(Com. Sub. for Com. Sub. for H. B. 2002 - By Delegates
Hanshaw (Mr. Speaker) and Hornbuckle)
(By Request of the Executive)**

[Passed April 9, 2025; in effect from passage]

[Approved by the Governor on April 30, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5A-13-1, §5A-13-2, §5A-13-3, §5A-13-4, §5A-13-5, and §5A-13-6, relating to the creation of the One Stop Shop Permitting Program in West Virginia; stating a legislative finding; providing for the creation of a Permitting Dashboard to operate as a "one-stop-shop" for obtaining and renewing permits, licenses, and business registrations; defining terms; identifying the offices, departments, divisions, and agencies that shall participate in the One Stop Shop Permitting Program; requiring the Secretary of the Department of Administration to coordinate and lead permitting agencies in implementing the program; establishing certain permitting and renewal fees; creating a refund requirement for late processing of a permit; maintaining the option to file applications for permits directly with participating agencies until July 1, 2027; providing exceptions to mandatory use of the permitting dashboard; protecting confidential information submitted with applications; requiring the Secretary of the Department of Administration to promulgate emergency and legislative rules to implement this program pursuant to West Virginia Code §29A-3-1 *et seq.*, including rules related to deadlines and fees including for expedited processing of applications; establishing effective dates; and providing for certain limited exceptions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**ARTICLE 13. ONE-STOP-SHOP PERMITTING PROGRAM.****§5A-13-1. Creation of the One-Stop-Shop Permitting Program.**

(a) The Legislature finds and declares that it is in the public interest to create a One-Stop-Shop Permitting Program. This program is designed to enhance public awareness, collaboration, accountability, coordination, transparency, and predictability in the state's permitting, licensing, and authorization processes, including for critical infrastructure projects and projects delivering significant economic development to West Virginians.

§5A-13-2. Definitions.

The words defined in this section have the meanings given them for purposes of this article unless the context clearly requires otherwise.

"Permit" means any permit, license, or approval that:

(1) Is a prerequisite for performing any construction, economic development, infrastructure, or natural resource project in this state; and

(2) Is issued, granted, modified, renewed, denied, or revoked by a permitting agency.

"Permitting agency" means any division, office, board, or other entity under the following departments or offices of this state that grants, issues, denies, or revokes a permit or business registration:

(1) The Department of Commerce;

(2) The Department of Environmental Protection;

(3) The Office of Environmental Health Services;

(4) The Department of Revenue, except the Lottery, Lottery Commission, and the Division of Financial Institutions shall be exempt;

(5) The Department of Tourism;

(6) The Department of Transportation, except the Division of Motor Vehicles shall be exempt; and

(7) The Secretary of State.

“Secretary” means the Secretary of the Department of Administration.

§5A-13-3. Permitting Program and Dashboard.

(a) The secretary shall coordinate and lead the various permitting agencies in the implementation and execution of the One-Stop-Shop Permitting Program.

(b) The secretary shall issue program guidance and provide training on the One-Stop-Shop Permitting Program and Permitting Dashboard authorized by this article.

(c) On or before January 1, 2027, the secretary shall make available for public use an online dashboard, designated the Permitting Dashboard. The Permitting Dashboard shall serve as a "one-stop-shop" for obtaining and renewing all permits. The Permitting Dashboard shall:

(1) Be easily accessible, searchable, and informative;

(2) Allow the applicants to view, research, apply, and renew permits in this state; and

(3) Allow individuals and businesses to create private accounts, through which they can view, save, and submit applications; electronically pay all required fees; receive updates on the status of applications; send and receive communications directly to and from the regulatory agencies; and receive electronic copies of approved permits;

(4) Allow for coordination between offices, departments, divisions, and agencies of the state, particularly regarding the sequence of particular permits, licenses, and business registrations to enable more efficient processing;

(5) Be designed to make the process for applying for and receiving construction, economic development, infrastructure, or natural resource permits, licenses, and business registrations in West Virginia the simplest, most efficient, and most business friendly in the nation;

(6) Provide applicants a "fast-track" option wherein an applicant can pay an additional fee to expedite the processing of a permit application; and

(7) Protect financial and proprietary information of applicants that is exempt from public disclosure under the West Virginia Freedom of Information Act, being §29B-1-1 *et seq.* of this code.

§5A-13-4. Refunds of Late Permits.

(a) Every permitting agency shall, on or before July 1, 2025, report to the secretary:

(1) a list of each type of permit issued under its authority;

(2) an explanation of each step involved in processing a properly completed permit;

(3) the average time from receipt of a permit application until the time it is determined to be complete;

(4) the average time from the completeness determination to approval or disapproval of a permit;

(5) the number of permit applications that have been received, approved, and rejected in the 2024 and 2025 fiscal years;

(6) any statutory or regulatory deadlines related to determining the completeness of an application for a permit or the granting or denial of permits; and

(7) data on processing times and statutory deadlines for comparable permits, licenses, or business registrations in West Virginia's neighboring states.

(b) For any permit that has no statutory or regulatory deadline for determining the completeness of an application, granting an

application, or denying an application, the secretary, in consultation with the permitting agency, shall within 60 days of the effective date of this article, propose an emergency rule under §29A-3-15 of this code and a legislative rule under §29A-3-1 *et seq.* of this code for consideration by the Legislature during the 2026 regular session to implement such a deadline and to set expedited deadlines for processing of “fast track” permits.

(c) On and after January 1, 2027, any permitting agency that fails to grant or deny a permit available and applied for through the One-Stop-Shop Permitting Program within the deadline identified under subsection (a) of this section or established under subsection (b) of this section shall refund all fees paid by the applicant for that permit.

(d) The refund provided for under subsection (c) of this section shall be paid by the permitting agency that did not process the permit within the established deadline.

(e) The refund requirements of subsection (c) of this section shall not apply if:

(1) the application for a qualifying permit is incomplete; and

(2) within 10 business days of identifying the application as incomplete, the permitting agency:

(A) notifies the applicant of the deficiency through the Permitting Dashboard;

(B) provides the applicant 30 days to cure the incomplete application; and

(3) the applicant fails to resubmit a complete application within that time.

§5A-13-5. Options for Paper or Alternative Electronic Forms.

(a) Use of the Permitting Dashboard by a permit-holder or prospective permit-holder is not mandatory for any permit application submitted before July 1, 2027. There shall be no penalty or disadvantage applied to any permit-holder or prospective permit-holder who chooses to bypass the Permitting Dashboard before that date and work directly with the agency to

obtain, complete, and return an application in paper form or through any pre-existing online application system operated by permitting agencies.

(b) On and after July 1, 2027, the Permitting Dashboard shall be the exclusive means of applying for a permit, as defined in §5A-13-2 of this code, except where an alternative means is required under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*, or the West Virginia Human Rights Act, being §5-11-1 *et seq.* of this code.

(c) The refund requirement under §5A-13-4(c) through §5A-13-4(e) of this code shall only apply to applications submitted through the Permitting Dashboard.

§5A-13-6. Legislative Rules.

(a) The secretary is authorized to promulgate legislative rules pursuant to §29A-3-1 *et seq.* of this code to implement the One-Stop-Shop Permitting Program including to:

(1) Establish, in consultation with the relevant agency:

(A) Deadlines for making completion determinations and for the processing of a permit application; and

(B) Expedited deadlines for the processing of a "fast-track" permit application;

(2) Establish, as needed, an applicant or user fee to fund the Permitting Program; and

(3) Establish a fee to be paid by an applicant to "fast-track" a permit application.

(b) Any fee implemented pursuant to subdivision (a)(3) of this section shall be:

(1) No greater than necessary to offset the permitting agency's cost to expedite the permit application; and

(2) Subject to the refund requirement under §5A-13-4(c) through §5A-13-4(e) of this code.

CHAPTER 135

**(Com. Sub. for H. B. 2008 - By Delegates Hanshaw (Mr.
Speaker) and Hornbuckle)
(By Request of the Executive)**

[Passed April 11, 2025; in effect July 1, 2025]

[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §5B-1-1, §5B-1-2, §5B-2-1, §5B-2-2, §5B-2-3, §5B-2-3b, §5B-2-4, §5B-2-4a, §5B-2-5, §5B-2-6, §5B-2-6a, §5B-2-9a, §5B-2-10, §5B-2-14, §5B-2-16, §5B-2-17, §5B-2-18, §5B-2-19, §5B-2-20, §5F-1-2, §5F-2-1, §29-1-8d, §31G-1A-1, §31G-1A-5, §31G-1A-6, and §31G-1A-7 of the Code of West Virginia, 1931, as amended; and to repeal §5F-1-3a and §5F-1-6, relating to merging and reorganizing of the executive branch; reconstituting Department of Economic Development as the Division of Economic Development and placing it within Department of Commerce; specifying that starting on July 1, 2025, new hires and anyone who moves positions within Department of Commerce shall be in classified exempt service system and shall be exempt from the state grievance procedures; redesignating Department of Economic Development as Division of Economic Development under Department of Commerce; correcting titles of Division of Economic Development and Department of Commerce in several sections of code; specifying that starting on July 1, 2025, new hires and anyone who moves positions within Division of Economic Development shall be in classified exempt service system and shall be exempt from state grievance procedures; providing certain exemptions; providing that Secretary of Department of Commerce may designate certain employees' status within the civil service system in order to comply with federal law or receive federal

funds; clarifying the continued applicability of certain other employee protections found elsewhere in code; changing code provisions to reflect certain actions regarding Department of Arts, Culture and History and Department of Tourism; correcting titles of affected departments, divisions, and positions throughout based on redesignations; and technical cleanup of amended and reenacted sections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-1. Department of Commerce; office of Secretary of Department of Commerce.

(a) The Secretary of Commerce is the chief executive officer of the department. The Governor shall appoint the secretary, by and with the advice and consent of the Senate, for the term for which the Governor is elected. Any reference in this code to the Bureau of Commerce means the Department of Commerce. Any reference in this code to the Commissioner of the Department of Commerce means the Secretary of Commerce. As used in this article, "secretary" means the Secretary of Commerce and "department" means Department of Commerce.

(b) The department may receive federal funds.

(c) The secretary serves at the will and pleasure of the Governor. The annual salary of the secretary is as provided in §6-7-2a of this code.

§5B-1-2. Agencies, boards, commissions, divisions, and offices comprising the Department of Commerce.

(a) The Department of Commerce consists of the following agencies, boards, commissions, divisions, and offices, including all of the allied, advisory, affiliated, or related entities, which are incorporated in and administered as part of the Department of Commerce:

(1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes the Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.* of this code.

(2) Office of Miners' Health, Safety and Training provided in §22A-1-1 *et seq.* of this code. The Board of Coal Mine Health and Safety and the Coal Mine Safety and Technical Review Committee provided in §22A-6-1 *et seq.* of this code are transferred to the Office of Miners' Health, Safety, and Training for purposes of administrative support and liaison with the Office of the Governor.

(3) Division of Natural Resources and Natural Resources Commission provided in §20-1-1 *et seq.* of this code;

(4) Division of Forestry provided in §19-1A-1 *et seq.* of this code;

(5) Geological and Economic Survey provided in §29-2-1 *et seq.* of this code;

(6) Workforce West Virginia provided in Chapter 21A of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development; and

(D) Division of Research, Information and Analysis; and

(7) Division of Economic Development provided in §5B-2-1 *et seq.* of this code, which includes:

(A) Office of Broadband provided for in 31G-1A-1 *et seq.*;

(B) Small Business Development Center provided for in §12-1A-1 *et seq.*;

(C) Office of Energy provided for in §5B-2F-2 of this code; and

(D) Broadband Enhancement Council provided for in §31G-1-1 *et seq.* of this code.

(b) Beginning on July 1, 2025, all employees of the Department of Commerce, or agency, board, commission, division, and office listed under subsection (a) of this section, shall be exempt from the state grievance procedures as set forth in §6C-2-1 *et seq.* of this code and from the classified civil service system under §29-6-1 *et seq.* of this code except that:

(1) All employees of the Department of Commerce, or agency, board, commission, division, and office listed under subsection (a) of this section, who are currently members of the classified civil service system shall retain their status as long as they remain in their current position, and all employees of the Department of Commerce who currently have recourse to the state grievance procedures will continue to have access to the state grievance procedures as long as they remain in their current position; and

(2) Any employee of the Department of Commerce, or agency, board, commission, division, and office listed under subsection (a) of this section, that leaves his or her position and remains an employee within the Department of Commerce shall, at that time, be transferred to the classified-exempt service system as defined in §29-6-2(g) of this code and be exempted from the state grievance procedures as set forth in §6C-2-1 *et seq.* of this code.

(c) The Secretary of the Department of Commerce shall have the authority to designate certain employees' status under the classified civil service system and grievance procedures as may be deemed necessary to comply with federal law, federal regulation, or the requirements for receipt of federal funding or assistance.

(d) Subsection (b) of this section shall not apply to:

(1) Any position appointed by the Governor; and

(2) Natural Resource Police Officers and Special Natural Resource Police Officers employed with the Division of Natural Resources who are charged with carrying out law enforcement activity, as set forth in §20-7-1 *et seq.* of this code.

(e) Nothing in this section shall exempt the Department of Commerce from the provisions of this code prohibiting nepotism, favoritism, discrimination, or unethical practices related to the promotion, transfer, layoff, removal, discipline, and compensation of state employees.

ARTICLE 2. DIVISION OF ECONOMIC DEVELOPMENT.

§5B-2-1. West Virginia Division of Economic Development; confidentiality.

(a) The West Virginia Division of Economic Development, formerly the Department of Economic Development and formerly the Development Office, is hereby continued as a division of the Department of Commerce.

(b) All references in this code to the West Virginia Department of Economic Development, West Virginia Development Office, the office of community and industrial development, or the Governor's office of community and industrial development shall be construed as references to the West Virginia Division of Economic Development. As used in this article, "division" means the Division of Economic Development, "department" means the Department of Commerce, and "secretary" means the Secretary of the Department of Commerce.

(c) Beginning on July 1, 2025, all employees of the Division of Economic Development shall be exempt from the state grievance procedures as set forth in §6C-2-1 *et seq.* of this code and from the classified civil service system under §29-6-1 *et seq.* of this code except that:

(1) All employees of the Division of Economic Development who are currently members of the classified civil service system shall retain their status as long as they remain in their current position, and all employees of the Division of Economic Development who currently have recourse to the state grievance procedures will continue to have access to the state grievance procedures as long as they remain in their current position; and

(2) Any employee of the Division of Economic Development that leaves his or her position and remains an employee within the Department of Commerce shall, at that time, be transferred to the classified-exempt service system as defined in §29-6-2(g) of this code and be exempted from the state grievance procedures as set forth in §6C-2-1 *et seq.* of this code.

(d) The Secretary of the Department of Commerce shall have the authority to designate certain employees' status under the classified civil service system and grievance procedures as may be deemed necessary to comply with federal law, federal regulation, or the requirements for receipt of federal funding or assistance.

(e) Subsection (c) of this section shall not apply to any position appointed by the Governor.

(f) Nothing in this section shall exempt the Division of Economic Development from the provisions of this code prohibiting nepotism, favoritism, discrimination, or unethical practices related to the promotion, transfer, layoff, removal, discipline, and compensation of state employees.

(g) Any documentary material, data or other writing made or received by the Division of Economic Development or other public body whose primary responsibility is economic development, for the purpose of furnishing assistance to a new or existing business shall be exempt from §29B-1-1 *et seq.* of this code: *Provided*, That any agreement entered into or signed by the Division of Economic Development or other public body which obligates public funds shall be subject to inspection and copying pursuant to §29B-1-1 *et seq.* of this code as of the date the agreement is entered into, signed, or otherwise made public.

§5B-2-2. Office of Executive Director of the Division of Economic Development.

(a) The Executive Director of the Division of Economic Development is the chief executive officer of the division. The Governor shall appoint the the Executive Director, who shall be qualified for the position by reason of his or her extensive

education and experience in the field of professional economic development. The Executive Director shall serve at the will and pleasure of the Governor. Any reference in this code to the Secretary of the Department of Economic Development, or the Executive Director of the West Virginia Development Office means the Executive Director of the Division of Economic Development. As used in this article, "executive director" means the Executive Director of the Division of Economic Development. Subject to the provisions of the contract provided in §5B-2-4 of this code, the executive director may hire, and fire economic development representatives employed pursuant to §5B-2-5 of this code.

(b) The Executive Director may promulgate rules to carry out the purposes and programs of the Division of Economic Development to include generally the programs available and the procedure and eligibility of applications relating to assistance under the programs. These rules are not subject to Chapter 29A of this code, but shall be filed with the Secretary of State. The Executive Director may adopt any of the rules previously promulgated by the Department of Economic Development, the West Virginia Development Office, or the council for community and economic development.

§5B-2-3. Powers and duties of the Executive Director.

(a) The Executive Director shall enhance economic growth and development through the development of a comprehensive economic development strategy for West Virginia. "Comprehensive economic development strategy" means a plan that outlines strategies and activities designed to continue, diversify or expand the economic base of the state as a whole; create jobs; develop a highly skilled workforce; facilitate business access to capital, including venture capital; advertise and market the resources offered by the state with respect to the needs of business and industry; facilitate cooperation among local, regional and private economic development enterprises; improve infrastructure on a state, regional and community level; improve the business climate generally; and leverage funding from sources other than the state, including federal and private sources.

(b) The Division of Economic Development shall be exempt from §5A-3-1 *et seq.* of this code.

§5B-2-3b. Economic development promotion and closing fund.

The previously created fund known as the "Development Office promotion fund" is hereby continued but shall hereafter be known as the "Economic Development Promotion and Closing Fund". Moneys deposited in this fund shall be administered by the Division of Economic Development, with the approval of the Secretary of the Department of Commerce, and used solely to promote business formation, expansion, recruitment and retention through aggressive marketing and international development and export assistance, and to provide a fund from which moneys may be drawn to offer certain incentives for business formation or expansion, to provide assistance with respect to site development or other concerns identified by the Executive Director, and to further facilitate economic development in this state, all of which economic development efforts and initiatives lead to more and better jobs with higher wages for all geographic regions and communities of the state, including rural areas and urban core areas, and for all residents.

§5B-2-4. Public-private partnerships.

The Division of Economic Development may enter into contractual or joint venture agreements with a nonprofit corporation organized pursuant to the corporate laws of the state, organized to permit qualification pursuant to section 501(c) of the Internal Revenue Code and for purposes of the economic development of West Virginia, and funded from sources other than the state. The contract shall include provisions relating to the employment of economic development representatives assigned to the Division of Economic Development to be paid a base salary by the state and performance-based economic incentives from private funds of the nonprofit corporation. Provisions relating to hiring practices with respect to economic development representatives, job descriptions, accountability, public-private liaison, and performance standards may be the subject of contract negotiations. The contract may include provisions for continuing education and

certification in the field of economic or industrial development for persons employed as economic development representatives. Agreements providing for the payment of performance-based incentives to the executive director are authorized. Agreements providing for the payment of travel and other expenses of or to the executive director or of or to economic development representatives from private funds by the nonprofit corporation are authorized. The prohibitions of §6B-2-5(b) and §6B-2-5(d) of this code are not applicable to the receipt by economic development representatives or by the executive director of performance-based incentives and other payments made by the nonprofit corporation and specifically authorized pursuant to this section.

From time to time the executive director may enter into joint ventures wherein the division and the nonprofit corporation share in the development and funding of economic development programs.

All contracts and joint venture agreements must be approved by the Executive Director of the Division and the Secretary of the Department of Commerce. Contracts entered into pursuant to this section for longer than one fiscal year shall contain, in substance, a provision that the contract shall be considered cancelled without further obligation on the part of the state if the State Legislature or, where appropriate, the federal government, shall fail to appropriate sufficient funds therefor or shall act to impair the contract or cause it to be cancelled.

§5B-2-4a. State allocation to regional councils.

The Division of Economic Development may enter into contractual agreements with the regional councils formed under §8-25-5 of this code to provide funding to the regional councils to be used to obtain federal matching grants and for other purposes determined to be appropriate by the department: *Provided*, That the amount of any allocation shall be determined by dividing the number of eligible regional councils into the total amount of funds made available for allocation by the Legislature. The Division of Economic Development shall develop criteria to determine a regional council's eligibility for the state allocation.

§5B-2-5. Economic development representatives.

(a) The executive director may employ economic development representatives to be paid a base salary within legislative appropriations to the division, subject to applicable contract provisions pursuant to §5B-2-4 of this code. Economic development representatives may receive performance-based incentives and expenses paid from private funds from a nonprofit corporation contracting with the division pursuant to §5B-2-4 of this code. The executive director shall establish job descriptions and responsibilities of economic development representatives, subject to the provisions of any contract with a nonprofit corporation entered into pursuant to §5B-2-4 of this code.

(b) Notwithstanding any provision of this code to the contrary, economic development representatives employed within the division are not subject to the procedures and protections provided by §29-6-1 *et seq.* and §29-6A-1 *et seq.* of this code. Any employee of the division on the effective date of this article who applies for employment as an economic development representative is not entitled to the protections of §29-6-1 *et seq.* of this code with respect to hiring procedures and qualifications; and upon accepting employment as an economic development representative, the employee relinquishes the protections provided for in §6C-2-1 *et seq.* and §29-6-1 *et seq.* of this code.

§5B-2-6. Transition; savings provision.

All programs, orders, determinations, rules, permits, grants, contracts, certificates, bonds, authorizations and privileges which have been issued, made, granted or allowed to become effective pursuant to any prior enactments of this article or by the Governor, the executive director of the Development Office, the Secretary of the Department of Economic Development, the Governor's Office of Community and Industrial Development or its director, or by a court of competent jurisdiction, and which are in effect on February 1, 1992, shall continue in effect according to their terms until modified, terminated, superseded, set aside or revoked by the Governor, the Secretary of the Department of Commerce, by a court of competent jurisdiction, or by operation of law.

§5B-2-6a. Brownfield economic development districts; applications; fees; rules.

(a) Any property owner of a tract of land that is a brownfield or voluntary remediated site pursuant to §22-22-1 *et seq.* of this code may, if the site and surrounding area were involved in the extraction and processing of coal, limestone, or other natural resources, apply to the division to become a brownfield economic development district.

(1) Applicants for a brownfield economic development district must demonstrate that the district when designated will create significant economic development activity;

(2) Applicants shall submit a development plan that provides specific details on proposed financial investment, direct and indirect jobs to be created and the viability of the district;

(3) Brownfield economic development districts:

(A) May not contain single-family housing;

(B) Shall provide all the infrastructure within the district without cost to the state, county, public service district or local municipal government;

(4) Applicants shall demonstrate that were it not for this designation, the contemplated development would not be possible, and that the development is in the best interest of the state;

(5) The applicant shall own or control the property within the district;

(6) All costs for the application process shall be borne by the applicant;

(7) An applicant shall demonstrate that the applicant has attempted to work in good faith with local officials in regard to land-use issues;

(8) Beginning July 1, 2011, an application for a brownfield economic development district may not be approved unless the

district conforms to a county's or municipality's planning and zoning laws established pursuant to §8A-7-1 *et seq.*, §8A-8-1 *et seq.*, and §8A-9-1 *et seq.* of this code.

(9) Prior to granting a designation of brownfield economic development district, the applicant shall provide documentation that the applicant has met all the requirements set forth in §22-22-1 *et seq.* of this code to be designated as a brownfield site or voluntary remediated site and is in compliance with the remediation plan;

(10) Nothing may be construed by this section to exempt brownfield economic districts from environmental regulation that would pertain to the development;

(11) The decision of the division in regard to an application is final; and

(12) Once designated, the district shall work in conjunction with the regional brownfield assistance centers of Marshall University and West Virginia University as specified in §18B-11-7 of this code.

(b) The division shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement this section and the rules shall include, but not be limited to, the application and time line process, notice provisions, additional application consideration criteria and application fees sufficient to cover the costs of the consideration of an application.

§5B-2-9a. Powers and duties of Secretary of the Department of Tourism and Tourism Advisory Council for improving Cardinal Passenger Train Service; declaration of public policy and Legislative intent.

(a) It is hereby declared the public policy of the State of West Virginia and the intent of the Legislature to facilitate, advance, and improve the availability of interstate passenger rail service to the state, the contributions of such service to local tourism development including the Boy Scouts of America Summit Bechtel Reserve in Fayette County, the marketing of such services for both

interstate rail travel for the benefit of the state's citizens, businesses, and local tourism and to improve the quality and frequency of such service, including the provision of a daily passenger train service at the earliest opportunity, of the Cardinal Passenger Train operated by the National Railroad Passenger Corporation, doing business as AMTRAK, on railroad lines crossing the south-central region of the state from Huntington eastward to White Sulphur Springs, being that same route historically and continuously used by the passenger train and its predecessors since the year 1871.

(b) Notwithstanding any other provision of this code to the contrary, the Secretary of the Department of Tourism, with the advice of the tourism advisory council, and in consultation with the Secretary of the West Virginia Department of Commerce, is directed to coordinate and supervise the activities of the state, to coordinate and cooperate with the political subdivisions and municipalities of the state, to cooperate with the National Railroad Passenger Corporation and with the other states served by the Cardinal Passenger Train to achieve the public policy set forth in subsection (a) of this section. The secretary may conduct such studies, and make such investigations, as may be reasonable and appropriate to advance the public policy set forth in subsection (a) of this section.

(c) The secretary may enter into contracts and memoranda of understanding with the National Railroad Passenger Corporation, with the other states served by the Cardinal Passenger Train, and with the political subdivisions and municipalities of this state, to achieve the public policy set forth in subsection (a) of this section. The secretary is further authorized to cooperate with the aforesaid other states and National Railroad Passenger Corporation in the formation of an interstate committee for the purpose of achieving the public policy set forth in subsection (a) of this section, to participate in said committee and appoint other designees thereto.

(d) In the exercise of their powers and duties under this section, the secretary and tourism advisory council shall consult with the West Virginia Department of Transportation and the Division of Multimodal Transportation Facilities. The West Virginia

Department of Transportation and the Division of Multimodal Transportation Facilities shall cooperate with the secretary and the tourism advisory council, and shall provide the secretary and the tourism advisory council with such reasonable and necessary assistance as may be possible based on available staff and funds to achieve the public policy set forth in subsection (a) of this section.

(e) There is hereby created a special revenue account, designated the "Cardinal Passenger Train Enhancement Fund" into which all moneys intended to advance the purposes of this section shall be deposited. Moneys in this account shall be expended solely for the public policy and purposes set forth in this section. Funds paid into this account may also be derived from the following sources: (1) All interest or return on investment accruing to this account; (2) any gifts, grants, bequests, transfers, appropriations, or other donations which may be received from any governmental entity or unit or any person, firm, foundation, or corporation; and (3) any appropriations by the Legislature which may be made for the purposes of this section. Any balance including accrued interest and other earnings at the end of any fiscal year shall not revert to the general fund but shall remain in the fund for the purposes set forth in this section. The moneys in the fund shall be paid out, at the sole discretion and direction of the secretary, to advance the purposes of this section.

§5B-2-10. Program and policy action statement; submission to Joint Committee on Government and Finance.

The tourism advisory council, the Division of Economic Development, and any other authorities, boards, commissions, corporations or other entities created or amended under this chapter and §18B-11-1 *et seq.* of this code, shall prepare and submit to the Joint Committee on Government and Finance on or before December 1, 1995, and each year thereafter, a program and policy action statement which shall outline in specific detail according to the purpose, powers and duties of the office or section, its procedure, plan and program to be used in accomplishing its goals and duties as required under this article.

§5B-2-14. Certified development community program.

The certified development community program is continued and is transferred to, incorporated in and administered as a program of the Division of Economic Development. The program shall provide funding assistance to the participating economic development corporations or authorities through a matching grant program. The division shall establish criteria for awarding matching grants to the corporations or authorities within the limits of funds appropriated by the Legislature for the program. The matching grants to eligible corporations or authorities are in the amount of \$50,000 for each fiscal year, if sufficient funds are appropriated by the Legislature. The division shall recognize existing county, regional or multicounty corporations or authorities where appropriate.

In developing its plan, the division shall consider resources and technical support available through other agencies, both public and private, including, but not limited to, the state college and university systems; the West Virginia Housing Development Fund; the West Virginia Economic Development Authority; the West Virginia Parkways Authority; the West Virginia Round Table; the West Virginia Chamber of Commerce; Regional Planning and Development Councils; Regional Partnership for Progress Councils; and state appropriations.

§5B-2-16. Entrepreneurship and Innovation Investment Fund.

(a) The Entrepreneurship and Innovation Investment Fund is hereby created. The fund shall be administered by the Division of Economic Development and shall consist of all moneys made available for the purposes and from the sources set forth in this section of the code.

(b) The fund consists of moneys received from the following sources:

- (1) All appropriations provided by the Legislature;
- (2) Any moneys available from external sources; and

(3) All interest and other income earned from investment of moneys in the fund.

(c) The Division of Economic Development shall use moneys in the fund to support entrepreneurship, creation of business startups, improvements in workforce participation, and attracting individuals to relocate to West Virginia.

(d) Any balance, including accrued interest and any other returns, in the Entrepreneurship and Innovation Investment Fund at the end of each fiscal year may not expire to the General Revenue Fund but remain in the fund and be expended for the purposes provided by this section.

(e) Fund balances may be invested with the state's Consolidated Investment Fund. Earnings on the investments shall be used solely for the purposes defined in §5B-2-16(c) of this code.

§5B-2-17. West Virginia Motorsport Committee.

(a) The West Virginia Motorsport Committee is hereby created.

(b) The committee consists of 17 members, including its chairperson, appointed by the Governor to serve at his or her will and pleasure. The committee members shall represent:

- (1) Asphalt oval racing;
- (2) Dirt drag racing;
- (3) Dirt oval racing;
- (4) Drag racing;
- (5) Drift racing;
- (6) Hill climb racing;
- (7) Karting racing;
- (8) Motor cross racing;

(9) Motorcycle road course racing;

(10) Mud racing;

(11) Off-road racing;

(12) Rallying racing;

(13) Rallycross racing;

(14) Road course racing;

(15) Time Trials racing; and

(16) Truck/Tractor pulls.

(c) The Secretary of the Department of Tourism and the Executive Director of the Division of Economic Development shall also serve on the committee, ex officio.

(d) The committee shall:

(1) Work with the existing facilities within the state to enhance existing racing;

(2) Develop a strategy that creates further opportunities, such as encouraging racing training schools, conducting special events, and encouraging special events and the construction of larger in-state racing facilities; and

(3) Seek opportunities to promote economic growth and manufacturing jobs related to motorsports.

(e) The committee shall hold regular meetings, at least quarterly, and conduct public hearings as it considers necessary.

§5B-2-18. Small Business Supplier Certification Assistance Program.

(a) The Legislature finds that there is currently no standardized certification process for small business enterprises in West Virginia. As a result, there is no uniform method for verifying or certifying small business contractors or suppliers seeking to

participate in government contracting and procurement processes. The Legislature further finds that it is important to develop such a certification program to promote more in-state businesses and to strengthen regional supply chains within the institutions of the state or its political subdivisions. Therefore, it is the purpose of this section to establish the Small Business Supplier Certification Assistance Pilot Program, to develop and implement a certification process for the benefit of small business enterprises seeking to further engage in the government contracting and bidding processes.

(b) The Division of Economic Development is hereby authorized to work in collaboration with Marshall University to establish a Small Business Supplier Certification Assistance Pilot Program to be implemented for purposes of developing a certification process for small business enterprises.

(c) Prior to implementation of the pilot program, Marshall University shall coordinate with the division to develop a master plan for the pilot program, the focus of which should include, but not be limited to, the following:

(1) A mission statement and small business participation plan for the program aimed at creating a competitive business environment by promoting the growth and success of small businesses through meaningful participation in the procurement process. The small business participation plan shall include:

(A) A study to determine any inequities that exist in public procurement and contracting that adversely affect small business vendors;

(B) An outreach program to identify and provide education to small business vendors;

(C) Initial and continuing education opportunities for the small business vendor community through both virtual and in-person workshops;

(D) A small business vendor notification process for bidding opportunities; and

(E) A method of assessing overall program results and establishing recommendations for future goals and participation.

(2) Development of an application and certification process for small business enterprises, including guidelines for certification, based upon existing federal Small Business Administration guidelines;

(3) Education and outreach proposals relating to program certifications and the benefits of small business participation;

(4) Technical training to be provided on state and government contracting and the public bidding process;

(5) Notification of current bidding opportunities for small business providers;

(6) Opportunities for collaboration with other public and private sector entities; and

(7) Methods of implementation of the pilot program, which shall include:

(A) Defined program goals;

(B) Program research to be conducted;

(C) Scheduling milestones, assignment of tasks, and allocation of resources; and

(D) Reporting of program certifications, successes, and benefits to the economy and small business opportunities.

(d) The pilot program shall continue in duration through December 31, 2023, and unless continued by the legislature, the program will terminate at midnight on January 1, 2024. Prior to the conclusion of the program, the division, in coordination with Marshall University, shall report to the Legislature's Joint Commission on Economic Development on the following:

(1) Progress towards and methods of implementation of the pilot program, including the required certifications and training for small business enterprises;

(2) An analysis of the overall program results based on the metrics created in the master plan of the pilot program;

(3) Recommendations as to whether the pilot program should continue beyond its current duration; and

(4) Any proposed plan or legislation necessary to accomplish the purpose of making the program permanent.

(e) For purposes of the pilot program, any information provided by a small business enterprise for purposes of the certification process shall be considered private and confidential and exempt from the provisions of the Freedom of Information Act, as provided in §29B-1-1 *et seq.* of this code. Neither the division nor Marshall University may share any information provided by a small business enterprise with any other state or federal agencies unless required by law.

§5B-2-19. Certified Sites and Development Readiness Program.

(a)(1) The Certified Sites and Development Readiness Program is hereby created and is to be administered as a program within the Division of Economic Development with appropriate rules as necessary. The program shall establish evaluation criteria and site certification levels based upon developmental readiness of an applicant's site. In developing the program, the division shall consider utilizing all available resources and technical support, both public and private.

(2) The division shall establish an application process and forms through which an applicant may begin to participate in the program and identify and describe potential sites for economic development and investment. The application process and forms should include site specific information such as property ownership and control, descriptions and mapping, historical and current uses, access to various forms of transportation, availability

of various utility services, environmental studies, conceptual plans, marketing materials, and all other information requested by the department.

(3) Applicants may include only state, county, municipal, or regional governmental entities such as, without limitation, economic development authorities, economic development corporations, economic development alliances, or economic development partnerships.

(4) The division shall select applicant's sites to participate in the program from the application materials. The division will select sites to participate in the program, evaluate the selected sites, and certify each site based upon its readiness to be developed from the established criteria. After evaluation, the division shall provide a report to the applicant detailing the results of the site evaluation, identifying site deficiencies and strengths, and suggesting a prioritized list of site improvements which may be made to improve the site's readiness to develop. The division may thereafter reevaluate and recertify a site as improvements are made to a site and deficiencies cured.

(5) The division may provide to applicants funding assistance up to a 50 percent match through a matching grant program which may be spent only for directly improving the developmental readiness of sites which have been selected to participate in the program. The division shall establish criteria and an application process for awarding matching grants to improve an applicant's site readiness: *Provided*, That no single site may receive any amount greater than a maximum amount established by the division through this grant matching program. Applications for this grant matching program must include details which specifically identify what deficiency or deficiencies will be cured and through what means and all other information required by the division. Grant matching funds must be spent, contracted to be spent, or returned to the department within 12 months of the date of receipt of the grant matching funds. Grant matching funds shall be paid back to the division when a participating site is sold or leased for development. The division shall take prudent steps to receive a security interest in a participating site in the amount of the grant

matching funds award including, but not limited to, placing of record in the county where the participating site is located, an appropriate lien against the title. All funds repaid under this section shall remain within the program for use on participating sites. The division shall monitor, and request appropriate evidence documenting the cured deficiencies and thereafter reevaluate and recertify a participating site as part of this grant matching program.

(6) The division may provide funding assistance to applicants through a micro grant program which may be spent only for directly improving the developmental readiness of sites which have been selected to participate in the program. The division shall establish criteria and an application process for awarding the micro grants to improve an applicant's site readiness: *Provided*, That no single site may receive any amount greater than \$75,000 through this micro grant program. Applications for this micro grant program must include details which specifically identify what deficiency or deficiencies will be cured and through what means and all other information required by the division. Micro grant funds must be spent, contracted to be spent, or returned to the division within 12 months of the date of receipt of the micro grant funds. All funds returned under this section shall remain within the program for use on participating sites. The division shall monitor and request appropriate evidence documenting the cured deficiency and thereafter reevaluate and recertify a participating site as part of this micro grant program.

(b) (1) The Certified Sites and Development Readiness Fund is hereby created. The fund shall be administered by the Division of Economic Development and shall consist of all moneys made available for the purposes from:

(A) Appropriations provided by the Legislature;

(B) Any moneys available from external sources; and

(C) All interest and other income earned from investment of moneys in the fund.

(2) The Division of Economic Development shall use moneys in the fund to support The Certified Sites and Development Readiness Program.

(3) Any balance, including accrued interest and any other returns, in the fund at the end of each fiscal year may not expire to the General Revenue Fund but shall remain in the fund and be expended for the purposes provided by this section.

(4) Fund balances may be invested under §12-6C-6 of this code. Earnings on the investments shall be used solely for the purposes defined in this section.

§5B-2-20. West Virginia Uncrewed Aircraft Systems Advisory Council.

(a) The West Virginia Uncrewed Aircraft Systems Advisory Council is hereby created within the Division of Economic Development.

(b) The council consists of the following nine members, including the chairperson:

(1) The Executive Director of the Division of Economic Development or his or her designee, ex officio, who shall serve as the chair of the council, and who shall vote when necessary in the event the appointed members of the council become deadlocked;

(2) The following eight members shall be appointed by the Governor and serve at his or her will and pleasure:

(A) One member representing the Secretary of the Department of Transportation;

(B) One member from the Adjutant General's Department;

(C) One member representing the uncrewed aircraft system industry with at least five years of experience operating an uncrewed aircraft;

(D) One member representing a national association of the uncrewed aerial vehicle industry;

(E) One member with experience managing a commercial services airport;

(F) One member representing business and industry, generally;

(G) One member representing academia; and

(H) One member representing the advanced air mobility industry developing human transit capabilities.

(3) Members of the council will receive no compensation but are entitled to reimbursement for mileage expenses while attending meetings of the committee to the extent that funds are available through the Division of Economic Development.

(c) The council shall:

(1) Identify trends and technologies driving innovation in uncrewed aircraft systems;

(2) Develop comprehensive strategies, including, but not limited to, the promotion of research and development, education, economic growth, and jobs in the uncrewed aircraft system industry in West Virginia; public acceptance of the uncrewed aircraft system industry; business planning; air vehicle technology and manufacturing; and airspace management and national airspace system integration; and

(3) Develop recommended legislation addressing specific issues and in furtherance of the comprehensive strategies identified in subdivision (2), subsection (c) of this section.

(d) The council shall meet at least annually and may convene public meetings to gather information or receive public comments.

(e) The council shall report on the status of its duties, goals, accomplishments, and recommendations to the Legislature on at least an annual basis.

**CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE
BRANCH OF STATE GOVERNMENT.**

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments created; offices of secretary created.

(a) There are created, within the executive branch of the state government, the following departments:

- (1) Department of Administration;
- (2) Department of Environmental Protection;
- (3) Department of Health;
- (4) Department of Homeland Security;
- (5) Department of Revenue;
- (6) Department of Transportation;
- (7) Department of Commerce;
- (8) Department of Veterans' Assistance;
- (9) Department of Tourism;
- (10) Department of Human Services; and
- (11) Department of Health Facilities.

(b) Each department will be headed by a secretary appointed by the Governor with the advice and consent of the Senate. Each secretary serves at the will and pleasure of the Governor.

§5F-1-3a. Executive compensation commission.

[Repealed.]

§5F-1-6. House Bill 4006 amendments effective date.

[Repealed.]

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.**§5F-2-1. Transfer and incorporation of agencies and boards; funds.**

(a) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

(1) Public Employees Insurance Agency provided in §5-16-1 *et seq.* of this code;

(2) Governor's Mansion Advisory Committee provided in §5A-5-1 *et seq.* of this code;

(3) Commission on Uniform State Laws provided in §29-1A-1 *et seq.* of this code;

(4) West Virginia Public Employees Grievance Board provided in §6C-3-1 *et seq.* of this code;

(5) Board of Risk and Insurance Management provided in §29-12-1 *et seq.* of this code;

(6) Boundary Commission provided in §29-23-1 *et seq.* of this code;

(7) Public Defender Services provided in §29-21-1 *et seq.* of this code;

(8) Division of Personnel provided in §29-6-1 *et seq.* of this code;

(9) West Virginia Ethics Commission provided in §6B-2-1 *et seq.* of this code;

(10) Consolidated Public Retirement Board provided in §5-10D-1 *et seq.* of this code; and

(11) Real Estate Division provided in §5A-10-1 *et seq.* of this code.

(b) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

(1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes the Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.* of this code.

(2) Office of Miners' Health, Safety, and Training provided in §22A-1-1 *et seq.* of this code. The Board of Coal Mine Health and Safety and the Coal Mine Safety and Technical Review Committee provided in §22A-6-1 *et seq.* of this code are transferred to the Office of Miners' Health, Safety, and Training for purposes of administrative support and liaison with the Office of the Governor.

(3) Division of Natural Resources and Natural Resources Commission provided in §20-1-1 *et seq.* of this code;

(4) Division of Forestry provided in §19-1A-1 *et seq.* of this code;

(5) Geological and Economic Survey provided in §29-2-1 *et seq.* of this code;

(6) Workforce West Virginia provided in chapter 21A of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development;

(D) Division of Research, Information and Analysis;

(7) Division of Rehabilitation Services provided in §18-10A-1 *et seq.* of this code; and

(8) Division of Economic Development provided in §5B-2-1 *et seq.* of this code, which includes:

(A) Office of Broadband provided for in 31G-1A-1 *et seq.*;

(B) Small Business Development Center provided for in §12-1A-1 *et seq.*; and

(C) The Office of Energy provided for in §5B-2F-2 of this code.

(c) The Economic Development Authority provided in §31-15-1 *et seq.* of this code is continued as an independent agency within the executive branch.

(d) The Water Development Authority and the Water Development Authority Board provided in §22C-1-1 *et seq.* of this code is continued as an independent agency within the executive branch.

(e) The West Virginia Educational Broadcasting Commission provided in §10-5-1 *et seq.* of this code is continued as a separate agency within the Department of Tourism, which shall provide administrative support for the authority.

(f) The following agencies and boards, including all of the allied, advisory, and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the Office of the Governor:

(1) Air Quality Board provided in §22B-2-1 *et seq.* of this code;

(2) Solid Waste Management Board provided in §22C-3-1 *et seq.* of this code;

(3) Environmental Quality Board, or its successor board, provided in §22B-3-1 *et seq.* of this code;

(4) Surface Mine Board provided in §22B-4-1 *et seq.* of this code;

(5) Shallow Gas Well Review Board provided in §22C-8-1 *et seq.* of this code; and

(6) Oil and Gas Conservation Commission provided in §22C-9-1 *et seq.* of this code.

(g) Subject to the provisions of §5F-2-1a of this code, the following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health:

(1) Human Rights Commission provided in §5-11-1 *et seq.* of this code;

(2) Bureau for Public Health provided in §16-1-1 *et seq.* of this code;

(3) Office of Emergency Medical Services and the Emergency Medical Service Advisory Council provided in §16-4C-1 *et seq.* of this code;

(4) Health Care Authority provided in §16-29B-1 *et seq.* of this code;

(5) The Developmental Disabilities Council established by Executive Order No. 6-88 and continued by Executive Order No. 15-99.

(h) Subject to the provisions of §5F-2-1a of this code, the following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in, and administered as a part of, the Department of Human Services:

(1) Women's Commission provided in §29-20-1 *et seq.* of this code; and

(2) Bureau for Child Support Enforcement provided in §48-1-1 *et seq.* of this code.

(i) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated

with any agency or board, are incorporated in and administered as a part of the Department of Homeland Security:

(1) West Virginia State Police;

(2) Division of Emergency Management provided in §15-5-1 *et seq.* of this code and Emergency Response Commission provided in §15-5A-1 *et seq.* of this code: *Provided*, That notwithstanding any other provision of this code to the contrary, whenever in this code, or a rule promulgated thereunder, a reference is made to the Division of Homeland Security and Emergency Management, it shall be construed to mean the Division of Emergency Management;

(3) Division of Administrative Services;

(4) Division of Corrections and Rehabilitation;

(5) Fire Commission;

(6) State Fire Marshal;

(7) Board of Probation and Parole;

(8) The West Virginia Fusion Center;

(9) Division of Protective Services; and

(10) Any other agency or entity hereinafter established within the Department of Homeland Security by an act of the Legislature.

(j) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:

(1) Tax Division provided in §11-1-1 *et seq.* of this code;

(2) Racing Commission provided in §19-23-1 *et seq.* of this code;

(3) Lottery Commission and position of Lottery Director provided in §29-22-1 *et seq.* of this code;

(4) Insurance Commissioner provided in §33-2-1 *et seq.* of this code;

(5) West Virginia Alcohol Beverage Control Commissioner provided in §11-16-1 *et seq.* of this code and §60-2-1 *et seq.* of this code;

(6) Board of Banking and Financial Institutions provided in §31A-3-1 *et seq.* of this code;

(7) Lending and Credit Rate Board provided in §47A-1-1 *et seq.* of this code;

(8) Division of Financial Institutions provided in §31A-2-1 *et seq.* of this code;

(9) The State Budget Office provided in §11B-2-1 *et seq.* of this code;

(10) The Municipal Bond Commission provided in §13-3-1 *et seq.* of this code;

(11) The Office of Tax Appeals provided in §11-10A-1 *et seq.* of this code; and

(12) The State Athletic Commission provided in §29-5A-1 *et seq.* of this code.

(k) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:

(1) Division of Highways provided in §17-2A-1 *et seq.* of this code;

(2) Parkways Authority provided in §17-16A-1 *et seq.* of this code;

(3) Division of Motor Vehicles provided in §17A-2-1 *et seq.* of this code;

(4) Driver's Licensing Advisory Board provided in §17B-2-1 *et seq.* of this code; and

(5) Division of Multimodal Transportation Facilities provided in §17-16F-1 *et seq.* of this code.

(l) Effective July 1, 2011, the Veterans' Council provided in §9A-1-1 *et seq.* of this code, including all of the allied, advisory, affiliated, or related entities and funds associated with it, is incorporated in and administered as a part of the Department of Veterans' Assistance.

(m) Except for powers, authority, and duties that have been delegated to the secretaries of the departments by §5F-2-2 of this code, the position of administrator and the powers, authority, and duties of each administrator and agency are not affected by the enactment of this chapter.

(n) Except for powers, authority, and duties that have been delegated to the secretaries of the departments by §5F-2-2 of this code, the existence, powers, authority, and duties of boards and the membership, terms, and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decision makers may not have their appellate or independent decision-making status affected by the enactment of this chapter.

(o) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in §5F-1-2 of this code, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.

(p) When an agency, board, or commission is transferred under a bureau or agency other than a department headed by a secretary

pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary, or a bureau. Nothing in this section extends the powers of department secretaries under §5F-2-2 of this code to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

(q) The Department of Economic Development as established in §5B-2-1 *et seq.* of this code is continued as a division of the Department of Commerce.

(r) The Department of Tourism as established in §5B-2I-1 *et seq.* of this code is continued as a separate independent agency within the Executive Branch, which includes the following sections and commissions listed under §29-1-1 of this code:

- (1) The Arts Section;
- (2) The Archives and History Section;
- (3) The Museums Section;
- (4) The Historic Preservation Section;
- (5) The State Library Section;
- (6) The National Coal Heritage Area Commission;
- (7) The Administrative Section;
- (8) The Educational Broadcasting Commission;
- (9) A Commission on the Arts;
- (10) A Commission on Archives and History;
- (11) A Library Commission; and
- (12) An Educational Broadcasting Council.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 1. ARTS, CULTURE AND HISTORY.

§29-1-8d. National Coal Heritage Area Commission.

(a)(1) The National Coal Heritage Area originally was a partnership project of the National Park Service and the State of West Virginia as represented by the Division of Tourism and the Division of Culture and History. In January 1999, the Governor of West Virginia appointed 28 experts from the state and the region to the National Coal Heritage Area Steering Committee to provide guidance in the development of the National Coal Heritage Area, and in 2002 the West Virginia Legislature created the National Coal Heritage Area Authority, a state agency with an independent board, to serve as the management entity for the National Coal Heritage Area.

(2) The West Virginia Legislature finds that there continues to be a significant need for a public body to promote and enhance historic preservation, tourism, and economic development activities that relate to the state's history as a coal-producing state within the counties of Boone, Cabell, Fayette, Lincoln, Logan, Kanawha, Marion, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne, and Wyoming.

(3) The Legislature additionally finds that the state entity previously known as the National Coal Heritage Area Authority may more effectively serve the people of West Virginia through the Department of Arts, Culture, and History as the National Coal Heritage Area Commission, where it will continue to work with the landowners, county officials, and community leaders, state and federal government agencies, and other interested parties to enable and facilitate the development of the National Coal Heritage Area will greatly assist in the realization of these potential benefits.

(b) Unless the context clearly requires a different meaning, the terms used in this section have the following meanings:

(1) "Commission" means the National Coal Heritage Area Commission;

(2) "Department" means the Department of Tourism; and

(3) "National Coal Heritage Area" means and comprises the counties of Boone, Cabell, Fayette, Lincoln, Logan, Kanawha, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne, and Wyoming.

(c) Creation; appointment of commission; terms; expenses; executive director:

(1) There is hereby created the National Coal Heritage Area Commission which is a section of the Department of Tourism, existing for the purposes of providing direction to and assistance with state and federal historic preservation, economic development, and tourism projects in the National Coal Heritage Area and aiding in the development and implementation of integrated cultural, historical, and land resource management policies and programs in order to retain, enhance, and interpret the significant values of the lands, waters, and structures in the National Coal Heritage Area.

(2) The commission shall be composed of, at a minimum, 19 members as follows:

(A) The following six persons shall be nonvoting members, and shall serve by virtue of their offices, and may be represented at meetings of the commission by designees:

(i) The secretary, or his or her designee;

(ii) The Secretary of the Department of Environmental Protection, or his or her designee;

(iii) The Executive Director of the Division of Economic Development, or his or her designee;

(iv) The State Superintendent of Schools, or his or her designee; and

(v) The Director of the Division of Natural Resources, or his or her designee;

(B) The remaining 13 members shall be appointed for terms of four years by the Governor with the advice and consent of the Senate. The county commission of each county within the National Coal Heritage Area may submit to the Governor a list of three candidates to be considered for board appointment. Of the 13 members appointed by the Governor, each candidate must live or work within the subject county and the appointees shall be representative of the tourism industry, the coal industry, the United Mine Workers of America, economic development activity, historic preservation activity, or higher education. Additional counties may submit names of individuals fitting the above criteria for consideration as ex-officio, non-voting, board membership;

(C) The terms of office shall be four years and shall expire on June 30. No appointed member may serve more than two consecutive full terms. A member shall continue to serve until his or her successor has been appointed and qualified;

(D) If an appointed member is unable to complete a term, the Governor shall appoint a person to complete the unexpired term. Each vacancy occurring on the board must be filled within 60 days after the vacancy is created;

(E) Any appointed member of the board shall immediately and automatically forfeit his or her membership on the board if he or she becomes a nonresident of the county, or ceases to be employed in the county, from which he or she was appointed;

(F) Each member of the board shall serve without compensation, but shall receive expense reimbursement for all reasonable and necessary expenses actually incurred in the performance of the duties of the office, in the same amount paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law: *Provided*, That no member may be reimbursed for expenses paid by a third party.

(3) The secretary shall appoint a director to carry out the actions of the board, which appointment may be in addition to other duties, to serve at the will and pleasure of the secretary. The director may employ necessary personnel and retain such temporary consultants or technicians as may be necessary for any special study or survey consistent with the provisions of this section. The director shall carry out plans to implement the provisions of this section and to exercise those powers. The director shall prepare annually, in consultation with the board, a budget for the commission.

(d) *Board; quorum; chairperson; bylaws.* —

(1) The board is the governing body of the National Coal Heritage Area Commission, and may exercise all the powers given the commission in this section.

(2) The director shall serve as the board chairperson. The board shall meet at such times as shall be specified by the chairperson, but in no case less than quarterly. A majority of seven appointed members shall constitute a quorum for the transaction of business.

(3) There shall be a standing committee of the National Coal Heritage Area Commission known as the Coal Heritage Trail Committee composed of the chairperson and members of the National Coal Heritage Area from the counties through which the Coal Heritage Trail passes. These counties are Mercer, McDowell, Wyoming, Raleigh, and Fayette. This standing committee shall be responsible for making recommendations to the full board regarding development and promotion of the Coal Heritage Trail, a national scenic byway.

(4) The board shall keep a record of its proceedings,

(e) *Powers of commission.* —

The commission may exercise all powers necessary or appropriate to carry out the purposes of this section, including, but not limited to, the power:

(1) To assist in the development and implementation of integrated cultural, historical, and land resource management policies and programs in the National Coal Heritage Area;

(2) To advise the executive director of the National Coal Heritage Commission in retaining, enhancing, and interpreting the significant values of the lands, waters, and structures of the area;

(3) To enter into partnerships with various preservation groups, landmark commissions, certified local governments, county commissions, and other entities to undertake the preservation, restoration, maintenance, operation, development, interpretation, and promotion of lands and structures that possess unique and significant historic, architectural, and cultural value associated with the coal mining heritage of the national coal heritage area;

(4) To make, amend, repeal, and adopt bylaws for the management and regulation of its affairs;

(5) To appoint officers, agents, and employees, and to contract for and engage the services of consultants;

(6) To execute contracts necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government, or with any person, individual, partnership, or corporation to effect any or all of the purposes of this article;

(7) Without in any way limiting any other subdivision of this section, to accept grants and loans from and enter into contracts and other transactions with any federal agency;

(8) To maintain an office at such places within the state as it may designate;

(9) To accept gifts or grants of property, funds, money, materials, labor, supplies, or services from the federal government or from any governmental unit, or any person, firm, or corporation;

(10) To construct, reconstruct, improve, maintain, repair, operate, and manage certain facilities in the National Coal Heritage Area as may be determined by the commission;

(11) To enter into contract with landowners and other persons holding an interest in the land being used for its recreational facilities to hold those landowners and other persons harmless with respect to any claim in tort growing out of the use of the land for public recreation or growing out of the public activities operated or managed by the commission from any claim except a claim for damages proximately caused by the willful or malicious conduct of the landowner or other person or any of his or her agents or employees; and

(12) To assess and collect a reasonable fee from those persons who use the designated facilities which are part of the national coal heritage area, and to retain and utilize that revenue for any purposes consistent with this article.

(f) *Continuation of legal obligations.* —

Nothing in this section may be considered as superseding, amending, modifying, or repealing any contract or agreement entered into for the benefit of the National Coal Heritage Area prior to the date of enactment of this section. All obligations, contracts, grants, and assets currently belonging to the Coal Heritage Highway Authority and the National Coal Heritage Area Authority shall be transferred to and become the responsibility and property of the National Coal Heritage Area Commission.

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

ARTICLE 1A. OFFICE OF BROADBAND.

§31G-1A-1. Office of Broadband; Director of Office.

There is hereby continued an Office of Broadband, which shall be organized within the Department of Commerce under the authority of the Secretary of Commerce. The Office of Broadband

shall be managed by a director, who shall report to the Executive Director of the Division of Economic Development.

§31G-1A-5. Protection of proprietary business information.

(a) Broadband deployment information provided to the Office of Broadband or its consultants and other agents, including, but not limited to, physical plant locations, subscriber levels, and market penetration data, constitutes proprietary business information and, along with any other information that constitutes trade secrets, shall be exempt from disclosure under the provisions of §29B-1-1 *et seq.* of this code: *Provided*, That the information is identified as or would reasonably be contemplated to be confidential information when submitted to the Office of Broadband.

(b) Trade secrets or proprietary business information obtained by the council or the Office of Broadband from broadband providers and other persons or entities shall be secured and safeguarded by the state. Such information or data shall not be disclosed to the public or to any firm, individual, or agency other than officials or authorized persons of the state.

(c) The official charged with securing and safeguarding trade secrets and proprietary data for the Office of Broadband is the Executive Director of the Division of Economic Development, who is authorized to establish and administer appropriate security measures.

§31G-1A-6. Legislative rule-making authority.

In order to implement and carry out the intent of this article, the Secretary of the Department of Commerce may propose rules for legislative approval pursuant to the provisions of §29A-3-1 *et seq.* of this code.

§31G-1A-7. Broadband Development Fund.

(a) The Broadband Development Fund is hereby created in the State Treasury. The fund shall be administered by the Secretary of the Department of Commerce and shall consist of all moneys made available for the purposes of this article from any source, including,

but not limited to, all gifts, grants, bequests or transfers from any source, any moneys that may be appropriated to the fund by the Legislature, and all interest or other return earned from investment of the fund. Expenditures from the fund shall be for the purposes set forth in subsection (b) of this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon the fulfillment of the provisions set forth in §11B-2-1 *et seq.* of this code: *Provided*, That for the fiscal year ending June 30, 2022, expenditures are authorized from collections rather than pursuant to an explicit appropriation by the Legislature. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this section.

(b) Monies of the Broadband Development Fund may only be expended for the following purposes:

- (1) Expenses for the administration of the Office of Broadband;
- (2) Line extension advancement and development projects, including expansion of existing fiber and cable networks;
- (3) Major broadband project strategies, including new networks or major expansions of existing networks;
- (4) GigReady incentive projects, including a state incentive for ISP and local governments and organizations to pool some of their federal American Rescue Plan Act allocations or other local funding;

And

- (5) Wireless Internet Networks, including expansions or upgrades of existing fixed wireless networks.

(c) Except funds expended for the administration of the Office of Broadband, monies of the Broadband Development Fund may only be expended for projects authorized by subsection (b) of this

section that have been certified to the Joint Committee on Government and Finance by the Director of the Office of Broadband or the Secretary of the Department of Commerce prior to making the expenditures.

CHAPTER 136

(H. B. 2009 - By Delegate Phillips)

[Passed April 11, 2025; in effect July 1, 2025)]

[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §5B-2I-2, §5B-2I-4, §10-5-2, §29-1-1, §29-1-1a, §29-1-2, §29-1-3, §29-1-4, §29-1-6, §29-1-7, §29-1-8, §29-1-8c, §29-1-9, §29-1-11, §29-1-12, §29-1-13, §29-1-14, and §29-1-15 of the Code of West Virginia, 1931, as amended; and to repeal §5F-1-3a, §5F-1-6, and §29-1-10, relating to the merging and reorganizing of the executive branch; abolishing Department of Arts, Culture, and History and reorganizing its sections and commissions under Department of Tourism; specifying the authority of the Secretary of Department of Tourism over these sections and commissions; correcting titles of affected departments, divisions, and positions based on the redesignations; specifying that starting on July 1, 2025, new hires and anyone who moves positions within Department of Tourism shall be in the classified exempt service system and shall be exempt from the state grievance procedures; providing Secretary of Department of Tourism authority to appoint the directors of certain sections; substituting the title of Secretary of Department of Tourism for Secretary of the Department of Arts, Culture, and History in several sections of code; granting Secretary of Tourism authority to approve or repeal rules promulgated by sections and commissions listed in certain sections of code; specifying that starting on July 1, 2025, new hires and employees that move positions within the sections and commissions shall be in the classified exempt service system and shall be exempt from state grievance procedures; providing an exemption; providing that Secretary of Department of Tourism may designate certain employees' status within the

civil service system in order to comply with federal law or receive federal funds; clarifying the continued applicability of certain other employee protections found elsewhere in code; granting Secretary of Department of Tourism discretion to allow a person to serve in multiple positions or professions within certain sections of code; removing certain specific qualifications for persons appointed as directors of various sections of code; and technical cleanup of amended and reenacted sections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2I. DEPARTMENT OF TOURISM.

§5B-2I-2. West Virginia Department of Tourism.

The West Virginia Department of Tourism, previously continued from the West Virginia Tourism Office and the Division of Tourism, is hereby continued as a department of the executive branch of state government. All references in this code to the Division of Tourism or to the West Virginia Tourism Office shall be construed as references to the West Virginia Department of Tourism. As used in this article, "department" means the Department of Tourism.

§5B-2I-4. Powers and duties of the Department of Tourism.

(a) The Department of Tourism, under the direction and charge of the secretary, shall develop and implement a comprehensive tourism advertising, promotion, and development strategy for West Virginia. "Comprehensive tourism advertising, promotion and development strategy" means a plan that outlines strategies and activities designed to continue, diversify and expand the tourism base of the state as a whole; create tourism jobs; develop a highly skilled tourism workforce; facilitate business access to capital for tourism; advertise and market the resources offered by the state with respect to tourism advertising, promotion and development;

facilitate cooperation among local, regional and private tourism enterprises; improve infrastructure on a state, regional and community level in order to facilitate tourism development; improve the tourism business climate generally; and leverage funding from sources other than the state, including local, federal and private sources. In addition to all other power and duties of the department by other provisions of this code, the department shall:

(1) Coordinate media events to promote a positive image of West Virginia and new investment in the state;

(2) Provide comprehensive strategic planning services to existing tourism enterprises;

(3) Promote attractions of West Virginia in other states;

(4) Provide advertising, marketing and communications goods and services, including, without limitation, a cooperative advertising program to facilitate and allow participation in the department's advertising and marketing campaigns and activities, to state agencies, departments, units of state or local government, private tourism enterprises and other persons, entities, or private enterprises, including, without limitation, convention and visitors' bureaus;

(5) Distribute West Virginia informational publications and manage the West Virginia Welcome Centers; and

(6) Coordinate programs, initiatives, and production of materials relating to the branding and marketing of the state, and its departments and agencies, and to provide greater coherence in such programs, initiatives, and materials across the departments and agencies of the state.

(b) In developing its strategies, plans and campaigns, the department shall consider the following:

(1) Improvement and expansion of existing tourism marketing and promotion activities;

(2) Promotion of cooperation among municipalities, counties and the West Virginia Infrastructure and Jobs Development Council in funding physical infrastructure to enhance the potential for tourism development.

(c) The Department of Tourism shall have the following powers and duties:

(1) To acquire for the state in the name of the department by purchase, lease, or agreement, or to accept or reject for the state, in the name of the department, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, to effectuate or support the purposes of this article;

(2) To make recommendations to the Governor and the Legislature of any legislation deemed necessary to facilitate the carrying out of any of the foregoing powers and duties and to exercise any other power that may be necessary or proper for the orderly conduct of the business of the department and the effective discharge of the duties of the department;

(3) To cooperate and assist in the production of motion pictures and television and other communications;

(4) To purchase advertising time or space in or upon any medium generally engaged or employed for said purpose to advertise and market the resources of the state or to inform the public at large or any specifically targeted group or industry about the benefits of living in, investing in, producing in, buying from, contracting with, or in any other way related to, the State of West Virginia or any business, industry, agency, institution, or other entity therein;

(5) To promote and disseminate information related to the attractions of the state through the operation of the state's telemarketing initiative, which telemarketing initiative shall include a centralized reservation and information system for state parks and recreational facilities;

(6) To take such additional actions as may be necessary to carry out the powers, duties and programs described in this article; and

(7) To provide assistance to and assist with retention and expansion of existing tourism-related enterprises in the state and to recruit or assist in the recruitment of new tourism-related enterprises to the state.

(d) The Department of Tourism may contract with the Division of Highways to sell advertising space on the WV511 website to promote in-state tourism and raise capital for technological improvements to the website: *Provided*, That 50 percent of the money collected for sale of advertising space is deposited into the Tourism Promotion Fund and the other 50 percent of the money collected from the sale of advertising space is remitted to the Division of Highways pursuant to the contract.

(e) The Department of Tourism may charge and collect reasonable fees for goods and services it provides to state agencies, departments, units of state or local government or other person, entity, or enterprise. All moneys collected by the department shall be deposited in the Tourism Promotion Fund and used in accordance with the provisions of this article.

(f) The Department of Tourism may engage and retain one or more advertising and marketing agencies, consultants, enterprises, firms, or persons, as deemed by the secretary, in his or her sole discretion, necessary or advisable to assist the department in carrying out its powers and duties as set forth in this article. In the procurement of advertising agencies, consultants, enterprises, or persons, from time to time, estimated to cost \$250,000 or more, the secretary shall encourage such advertising and marketing agencies, consultants, enterprises, firms, or persons to submit an expression of interest, which shall include a statement of qualifications, including anticipated concepts and proposed advertising, marketing and advertising campaigns. All potential contracts shall be announced by public notice published as a Class II legal advertisement in compliance with §59-3-3 of this code. A committee of three to five representatives of the department or the Tourism Advisory Council, as selected by the secretary, shall

evaluate the statements of qualifications and other materials submitted by interested firms and select three firms which, in their opinion, are best qualified to perform the desired service. The committee shall then rank, in order of preference, the three firms selected and shall commence scope of service and price negotiations with the first-ranked firm. If the department is unable to negotiate a satisfactory contract with the first-ranked firm, at a fee determined to be fair and reasonable, price negotiations with the firm of second choice shall commence. Failing accord with the second-ranked firm, the committee shall undertake price negotiations with the third-ranked firm. If the department is unable to negotiate a satisfactory contract with any of the selected firms, the office shall select additional firms in order of their competence and qualifications and it shall continue negotiations in accordance with this section until an agreement is reached.

If the procurement of the services is estimated by the secretary to cost less than \$250,000, the department shall conduct discussions with three or more firms solicited on the basis of known or submitted qualifications for the assignment prior to the awarding of any contract: *Provided*, That if a judgment is made that special circumstances exist and that seeking competition is not practical, the department may select a firm on the basis of previous satisfactory performance and knowledge of the department's needs. After selection, the department and selected firm shall develop the scope of desired services and negotiate a contract.

(g) The secretary of the Department of Tourism may, in order to carry out the powers and duties of the department described in this article, employ necessary personnel, contract with professional or technical experts or consultants and purchase or contract for the necessary equipment or supplies.

(h) The secretary of the Department of Tourism may designate, in writing, a list of positions within the department that shall be exempt from coverage under the state's classified service: *Provided*, That beginning on July 1, 2025, all employees of the Department of Tourism shall be exempt from the state grievance procedures as set forth in §6C-2-1 *et seq.* of this code and from the

classified civil service system under §29-6-1 *et seq.* of this code except that:

(1) All employees of the Department of Tourism who are currently members of the classified civil service system shall retain their status as long as they remain in their current position, and all employees of the Department of Tourism who currently have recourse to the state grievance procedures will continue to have access to the state grievance procedures as long as they remain in their current position; and

(2) Any employee of the Department of Tourism that leaves his or her position and remains an employee within the Department of Tourism shall, at that time, be transferred to the classified-exempt service system as defined in §29-6-2(g) of this code and be exempted from the state grievance procedures as set forth in §6C-2-1 *et seq.* of this code.

(i) The secretary shall have the authority to designate certain employees' status under the classified civil service system and grievance procedures as may be deemed necessary to comply with federal regulation, or the requirements for receipt of federal funding or assistance.

(j) Nothing in this article shall prevent a person, at the secretary's discretion, from serving in multiple positions within the Department of Tourism.

(k) Subsection (h) of this section shall not apply to any position appointed by the Governor.

(l) Nothing in this section shall exempt the Department of Tourism from the provisions of this code prohibiting nepotism, favoritism, discrimination, or unethical practices related to the promotion, transfer, layoff, removal, discipline, and compensation of state employees.

(m) The Department of Tourism shall submit a report annually to the Governor and the Legislature about the development of the tourism industry in the state and the necessary funding required by the state to continue the development of the tourism industry.

(n) The Department of Tourism and the secretary shall engage, collaborate, assist, and cooperate with the Department of Economic Development, when and as appropriate, to facilitate retention, expansion, recruitment, and location of existing and new tourism-related enterprises.

(o) The Department of Tourism shall utilize, to the fullest extent practicable and efficient, existing resources of the Department of Commerce for functions necessary for the operation of the department but which functions are not directly related to the purposes of the department listed above. The Department of Tourism may enter into such agreements with the Department of Commerce or other agencies of this state as may be necessary or advisable to utilize existing resources of this state.

(p) The Department of Tourism shall be exempt from §5A-3-1 *et seq.* of this code.

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-3a. Executive compensation commission.

[Repealed.]

§5F-1-6. House Bill 4006 amendments effective date.

[Repealed.]

CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RECREATION; ATHLETIC ESTABLISHMENTS; MONUMENTS AND MEMORIALS; ROSTER OF SERVICEMEN; EDUCATIONAL BROADCASTING COMMISSION.

ARTICLE 5. EDUCATIONAL BROADCASTING COMMISSION.

§10-5-2. West Virginia Educational Broadcasting Commission; members; organization; officers; employees; meetings; expenses.

(a) The West Virginia Educational Broadcasting Commission is continued as a public benefit corporation. The commission shall consist of nine voting members, who shall be residents of the state, including:

(1) The Governor or designee;

(2) The State Superintendent of Schools;

(3) One member of the West Virginia Board of Education to be selected by it annually;

(4) One member of the West Virginia Higher Education Policy Commission to be selected by it annually; and

(5) Five members appointed by the Governor by and with the advice and consent of the Senate for overlapping terms of five years, one term expiring each year.

(b) Not less than one appointive member shall come from each congressional district. Any vacancy among the appointed members shall be filled by the Governor by appointment for the unexpired term.

(c) Employees of noncommercial broadcasting stations in West Virginia are not eligible for appointment to the commission.

(d) The commission shall annually select a member to serve as the chair. The commission shall annually select one of its public members as vice chair and shall appoint a secretary who need not be a member of the commission and who shall keep records of its proceedings.

(e) The Cabinet Secretary of the Department of Tourism shall appoint the commission section director and fix his or her salary. The commission section director is responsible for managing and administering the daily functions of the commission and for performing all other functions necessary to the effective operation of the commission. The commission may establish offices for the proper performance of its duties.

(f) The commission shall hold at least one annual meeting. The time and place of the meetings shall be established upon its own resolution or at the call of the chairperson of the commission. The members shall serve without compensation but may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 1. ARTS, CULTURE AND HISTORY.

§29-1-1. Abolishing the Department of Arts, Culture, and History and reorganizing its sections under the Department of Tourism; sections and commissions; purposes; definitions; effective date.

(a) On July 1, 2025, the Department of Arts, Culture, and History, is abolished and its authorities and duties transferred to the Department of Tourism.

(b) On July 1, 2025, the following sections and commissions shall be reorganized under the Department of Tourism:

- (1) The Arts Section;
- (2) The Archives and History Section;
- (3) The Museums Section;
- (4) The Historic Preservation Section;
- (5) The State Library Section;
- (6) The National Coal Heritage Area Commission;
- (7) The Administrative Section;
- (8) The Educational Broadcasting Commission;

- (9) A Commission on the Arts;
- (10) A Commission on Archives and History;
- (11) A Library Commission; and
- (12) An Educational Broadcasting Council.

(c) On and after July 1, 2025, the Secretary of the Department of Tourism shall exercise control and supervision over each section and commission listed in subsection (b) of this section and shall be responsible for the projects, programs, and actions of each of its sections. The purpose and duty of these sections and commissions is to advance, foster, and promote the creative and performing arts and crafts, including both indoor and outdoor exhibits and performances; to advance, foster, promote, identify, register, acquire, mark, and care for historical, prehistorical, archaeological, and significant architectural sites, structures, and objects in the state; to encourage the promotion, preservation, and development of significant sites, structures, and objects through the use of economic development activities such as loans, subsidies, grants, and other incentives; to coordinate all cultural, historical, and artistic activities in state government and at state-owned facilities; to acquire, preserve, and classify books, documents, records, and memorabilia of historical interest or importance; and, in general, to do all things necessary or convenient to preserve and advance the arts, humanities, culture, and history of the state.

(d) The Secretary of the Department of Tourism has jurisdiction and control and may set and collect fees for the use of all space in the building presently known as the West Virginia Science and Culture Center, including the deck and courtyards forming an integral part thereof; the building presently known as West Virginia Independence Hall in Wheeling, including all the grounds and appurtenances thereof; "Camp Washington Carver" in Fayette County, as provided in §29-1-14 of this code; and any other sites as may be transferred to or acquired by the department. Notwithstanding any provision of this code to the contrary, beginning on and after July 1, 2018, the department shall have

responsibility for, and control of, all visitor touring and visitor tour guide activities within the Capitol Building at Charleston.

(e) For the purposes of this article, "department" means the Department of Tourism and "secretary" means the Secretary of the Department of Tourism. On and after July 1, 2025, references throughout this code to the "Commissioner of Culture and History" or the "Curator of the Department of Arts, Culture, and History" mean the "Secretary of the Department of Tourism and references throughout this code to the "Division of Culture and History" or "Department of Arts, Culture, and History," mean the "Department of Tourism".

§29-1-1a. Transfer of powers and duties; existing contracts and obligations.

(a) Except as otherwise provided in this article, the powers and duties of the West Virginia antiquities commission, the West Virginia arts and humanities council and the department of archives and history are hereby transferred to the Department of Tourism.

(b) All existing assets, equipment, contracts, and records of the Department of Arts, Culture, and History, the West Virginia antiquities commission, the West Virginia arts and humanities council, and the department of archives and history, or relating to the present science and culture center, shall be transferred to the Department of Tourism.

(c) Beginning on July 1, 2025, all employees of any section or commission listed in §29-1-1(b) of this code shall be exempt from the state grievance procedures as set forth in §6C-2-1 *et seq.* of this code and from the classified civil service system under §29-6-1 *et seq.* of this code except that:

(1) All employees of any section or commission listed in §29-1-1(b) of this code who are currently members of the classified civil service system shall retain their status as long as they remain in their current position, and all employees of any section or commission listed in §29-1-1(b) of this code who currently have

recourse to the state grievance procedures will continue to have access to the state grievance procedures as long as they remain in their current position; and

(2) Any employee of any section or commission listed in §29-1-1(b) of this code that leaves his or her position and remains an employee within the Department of Tourism shall, at that time, be transferred to the classified-exempt service system as defined in §29-6-2(g) of this code and be exempted from the state grievance procedures as set forth in §6C-2-1 *et seq.* of this code.

(d) The secretary shall have the authority to designate certain employees' status under the classified civil service system and grievance procedures as may be deemed necessary to comply with federal regulation, or the requirements for receipt of federal funding or assistance.

(e) Nothing in this article shall prevent a person, at the secretary's discretion, from serving in multiple positions or professions within the sections or commissions listed in §29-1-1(b) of this code.

(f) Subsection (c) of this section shall not apply to any position appointed by the Governor.

(g) Nothing in this section shall exempt any section or commission listed in §29-1-1(b) of this code from the provisions of this code prohibiting nepotism, favoritism, discrimination, or unethical practices related to the promotion, transfer, layoff, removal, discipline, and compensation of state employees.

§29-1-2. General powers of secretary.

(a) The secretary shall assign and allocate space in all facilities assigned to the department and all space in the building presently known as the West Virginia Science and Culture Center, and any other buildings or sites under the control of the department, and may, in accordance with the provisions of §29A-3-1 *et seq.* of this code, prescribe rules, regulations and fees for the use and occupancy of said facilities, including tours.

(b) The secretary shall coordinate the operations and affairs of the sections and commissions of the department and assign each section or commission responsibilities according to criteria the curator deems most efficient, productive and best calculated to carry out the purposes of this article. The secretary shall provide to the fullest extent possible for centralization and coordination of the bookkeeping, personnel, purchasing, printing, duplicating, binding and other services which can be efficiently combined. The secretary may establish such other sections for such purposes as he or she deems necessary, and may appoint directors thereof. The secretary may appoint a director of the West Virginia Science and Culture Center. The secretary shall serve as the state historic preservation officer.

(c) The secretary shall prepare a proposed department budget for submission to the Governor for each fiscal year.

(d) No contract, agreement or undertaking may be entered into by any section of the department or any section thereof which involves the expenditure of funds without the express written approval of the secretary as to fiscal responsibility.

(e) The secretary shall prepare and submit to the Governor an annual report in accordance with the provisions of §5-1-20 of this code, which report shall include a detailed account of the activities of each section and commission of the department.

(f) The secretary shall employ all personnel for the sections, except for persons in the professional positions established within the sections as provided in this article; and shall supply support services to the commissions and to the Governor's Mansion Advisory Committee.

(g) On and after July 1, 2025, the secretary may grant or withhold written consent to the proposal of any rule, as defined by §29A-1-2 of this code, by any section or commission listed in §29-1-1(b) of this code. Without the secretary's written consent, no proposal for a rule filed by any section or commission listed in §29-1-1(b) of this code after July 1, 2025, shall have any force or effect.

(h) The secretary may proposal a repeal, pursuant to either §29A-3-1a(b) or §29A-3-8(c) of this code, as appropriate, of any rule promulgated by the Department of Arts, Culture, and History, the Division of Culture and History, or any section or commission listed in §29-1-1(b) of this code.

§29-1-3. Commission on the Arts.

(a) The Commission on the Arts is continued and shall be composed of 15 appointed voting members, the secretary as an ex officio voting member, the director of the arts section as an ex officio nonvoting member, and the ex officio nonvoting members set forth or authorized for appointment in this section.

(b)(1) The Governor shall appoint, by and with the advice and consent of the Senate, the voting members of the commission for staggered terms of three years. A person appointed to fill a vacancy shall be appointed only for the remainder of that term.

(2) No more than eight appointed voting members may be of the same political party. Appointed voting members of the commission shall be appointed so as to fairly represent both sexes, the ethnic and cultural diversity of the state, and the geographic regions of the state.

(3) The commission shall elect one of its members as chair. It shall meet at the times specified by the chair. Notice of each meeting shall be given to each member by the chair in compliance with the open meetings laws of the state. A majority of the voting members constitute a quorum for the transaction of business. The director of the arts section shall serve as secretary. The curator or a majority of the members also may call a meeting upon notice as provided in this section.

(4) Each member of the commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of the duties of the office; except that if the expenses are paid, or are to be paid, by a third party, the member or ex officio member, as the case may be, may not be reimbursed by the state.

(5) Upon recommendation of the secretary, the Governor also may appoint those officers of the state that are appropriate to serve on the commission as ex officio nonvoting members.

(c) The commission may:

(1) Advise the secretary and the director of the arts section concerning the accomplishment of the purposes of that section and establish a state plan with respect to the arts section;

(2) Approve and distribute grants-in-aid and awards from federal and state funds relating to the purposes of the arts section;

(3) Request, accept, or expend federal funds to accomplish the purposes of the arts section when federal law or regulations would prohibit those actions by the secretary or section director, but would permit them to be done by the commission on the arts;

(4) Otherwise encourage and promote the purposes of the arts section.

(d) A special revenue account in the State Treasury, known as the "Cultural Facilities and Capital Resources Matching Grant Program Fund", is continued. The fund shall consist of moneys received under §29-22A-10 of this code and funds from any other source. The moneys in the fund shall be expended in accordance with the following:

(1) Fifty percent of the moneys deposited in the fund shall be expended by the Commission on the Arts for capital improvements, preservation, and operations of cultural facilities: *Provided*, That the Commission on the Arts may use no more than 25 percent of the funding for operations of cultural facilities pursuant to the rule required by this subdivision. The Commission on the Arts shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to create a matching grant program for cultural facilities and capital resources; and

(2) Fifty percent of the moneys deposited in the fund shall be expended by the Department of Tourism for:

(A) Capital improvements, preservation, and operation of cultural facilities that are managed by the department; and

(B) Capital improvements, preservation, and operation of cultural facilities that are not managed by the department.

§29-1-4. Arts section; director.

(a) The purposes and duties of the arts section are to stimulate, encourage, assist, promote, foster and develop the performing and creative arts and crafts in the state; and in furtherance thereof to make awards, prizes and grants to individual performers, artists or craftsmen and to public or private corporations or associations in the field of either the performing or creative arts and crafts that would tend to encourage and foster the advancement of such arts and crafts; to support cultural, artistic or craft exhibits or performances at the department's facilities or on tour; and to perform such other duties as may be assigned to said section by the secretary.

(b) The secretary shall appoint a director of the arts section who is qualified, with relevant experience.

(c) With the approval of the secretary, the director shall establish professional positions within the section. The director shall employ the personnel within these professional positions for the section: *Provided*, That nothing in this subsection shall prevent a qualified person from serving in multiple professions within this section or any section listed in §29-1-1(b) of this code.

(d) The director may propose rules for legislative promulgation, in accordance with the provisions of §29A-3-1 *et seq.* of this code, concerning the professional policies and functions of the arts section, subject to the approval of the secretary.

§29-1-6. Archives and history section; director.

(a) The purposes and duties of the archives and history section are to locate, survey, investigate, register, identify, preserve, protect, restore and recommend to the secretary for acquisition documents and records having historical, evidential, administrative

and/or legal value relating to the State of West Virginia and the territory included in the state from the earliest times to the present, upon its own initiative or in cooperation with any private or public society, organization or agency; to conduct a continuing survey and study throughout the state to develop a state plan to determine the needs and priorities for the preservation of the documents and records; to direct, protect, preserve, study and disseminate information on the documents and records; to provide matching grants to political subdivisions of this state to protect and preserve the documents and records; to operate and maintain a state library for the preservation of all public records, state papers, documents and reports of all three branches of state government including all boards, commissions, departments and agencies as well as any other private or public papers, books or documents of peculiar or historic interest or significance; to designate appropriate monuments, tablets or markers for historic, architectural and scenic sites within the state and to arrange for the purchase, replacement, care of, and maintenance of the monuments, tablets, and markers and to formulate and prepare suitable copy for them; to edit and publish a historical journal devoted to the history, biography, bibliography and genealogy of West Virginia; and to perform any other duties assigned to the section by the commissioner.

(b) The secretary shall appoint a director of the archives and history section, who shall be qualified, with relevant experience. The person serving as the state historian and archivist on the date of enactment of this article is eligible for appointment as the director of the archives and history section. The director of the archives and history section shall serve as the state historian and archivist.

(c) With the approval of the secretary, the director shall establish professional positions within the section and develop appropriate organizational structures to carry out the duties of the section. The director shall employ the personnel with applicable professional qualifications to fill positions within the organizational structure with the minimum professional qualifications. At the minimum, the following professions shall be represented within the section staff: Historian, archivist, librarian

and technical and clerical positions as are required : *Provided*, That nothing in this subsection shall prevent a qualified person from serving in multiple professions within this section or any section listed in §29-1-1(b) of this code.

(d) The director shall promulgate rules with the approval of secretary and in accordance with §29A-3-1 *et seq.* of this code concerning: (1) The professional policies and functions of the archives and history section; and (2) any other rules determined necessary to effectuate the purposes of this article.

§29-1-7. Museums section; director.

(a) The purposes and duties of the museums section are to locate, survey, investigate, register, identify, excavate, preserve, protect, restore and recommend to the secretary for acquisition historic objects worthy of preservation, relating to the State of West Virginia and the territory included therein from the earliest times to the present, upon its own initiative or in cooperation with any private or public society, organization or agency; to conduct a continuing survey and study throughout the state to develop a state plan to determine the needs and priorities for the preservation, restoration or development of such objects; to direct, protect, excavate, preserve, study or develop such objects; to preserve and protect all battle or regimental flags borne by West Virginians and other memorabilia of historic interest; to operate and maintain a state museum, and to coordinate activities with other museums in the state; and to perform such other duties as may be assigned to the section by the secretary.

(b) With the advice and consent of the secretary, in addition to the duties above set forth, the section shall determine the whereabouts of and require the return of furnishings and objects missing from the capitol building and other state-owned or controlled buildings, including, but not limited to, furnishings chosen or purchased for the capitol by its architect, Cass Gilbert. No furnishings from the capitol may be sold or disposed of except pursuant to the provisions of §5A-3-1 *et seq.* of this code. If furnishings originally designated as capitol building furnishings have been sold or otherwise disposed of without the requisite sale

procedures, such furnishings shall be returned to the capitol and, upon presentation of proof of the amount paid, the current owner shall be reimbursed for the cost of the furnishing less any appropriate depreciation or wear and tear.

(c) The secretary shall appoint a director of the museums section, who shall be qualified, with relevant experience.

(d) With the approval of the secretary, the director shall establish professional positions within the section and develop appropriate organizational structures to carry out the duties of the section. The director shall employ the personnel with applicable professional qualifications to fill positions within the organizational structure and section. At the minimum, the following professions shall be represented within the section staff: Curator and such technical and clerical positions as are required: *Provided*, That nothing in this subsection shall prevent a qualified person from serving in multiple professions within this section or any section listed in §29-1-1(b) of this code.

(e) The director shall promulgate rules with the approval of the secretary and in accordance with §29A-3-1 *et seq.* of this code concerning: (1) The professional policies and functions of the museums section; and (2) such other rules and regulations as may be deemed necessary to effectuate the purposes of this section.

§29-1-8. Historic preservation section; director.

(a) The purposes and duties of the historic preservation section are to locate, survey, investigate, register, identify, preserve, protect, restore and recommend to the secretary for acquisition historic, architectural, archaeological and cultural sites, structures and objects worthy of preservation, including human skeletal remains, graves, grave artifacts and grave markers, relating to the State of West Virginia and the territory included therein from the earliest times to the present upon its own initiative or in cooperation with any private or public society, organization or agency; to conduct a continuing survey and study throughout the state to develop a state plan to determine the needs and priorities for the preservation, restoration or development of the sites,

structures and objects; to direct, protect, excavate, preserve, study or develop the sites and structures; to review all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the state for the purposes of furthering the duties of the section; to carry out the duties and responsibilities enumerated in the National Historic Preservation Act of 1966, as amended, as they pertain to the duties of the section; to develop and maintain a West Virginia State Register of Historic Places for use as a planning tool for state and local government; to cooperate with state and federal agencies in archaeological work; to issue permits for the excavation or removal of human skeletal remains, grave artifacts and grave markers, archaeological and prehistoric and historic features under the provisions of §29-1-8a of this code; and to perform any other duties as may be assigned to the section by the secretary.

(b) The secretary shall appoint a director of the historic preservation section who shall be qualified, with relevant experience. The director of the historic preservation section shall serve as the deputy state historic preservation officer.

(c) With the approval of the secretary, the director shall establish professional positions within the section and develop appropriate organizational structures to carry out the duties of the section. The director shall employ the personnel with applicable professional qualifications to fill positions within the organizational structure with the minimum professional qualifications necessary to carry out the provisions of the National Historic Preservation Act of 1966, as amended. At the minimum, the following professions shall be represented within the section staff: Historian, architectural historian, a structural historian who specializes in historical preservation, an archaeologist specializing in historic and prehistoric archaeology and such technical and clerical positions as are required : *Provided*, That nothing in this subsection shall prevent a qualified person from serving in multiple professions within this section or any section listed in §29-1-1(b) of this code.

(d) The director shall promulgate rules with the approval of the secretary and in accordance with §29A-3-1 *et seq.* of this code

concerning: (1) The professional policies and functions of the historic preservation section; (2) the review of and, when required, issuance of permits for all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the state as indicated in subsection (a) of this section in order to carry out the duties and responsibilities of the section; (3) the establishment and maintenance of a West Virginia State Register of Historic Places, including the criteria for eligibility of buildings, structures, sites, districts and objects for the state Register and procedures for nominations to the state Register and protection of nominated and listed properties; (4) the review of historic structures in accordance with compliance alternatives and other provisions in any state fire regulation and shall coordinate standards with the appropriate regulatory officials regarding their application; (5) review of historic structures in conjunction with existing state or local building codes and shall coordinate standards with the appropriate regulatory officials for their application; and (6) any other rules as may be considered necessary to effectuate the purposes of this article.

§29-1-8c. State Library Section.

(a) There is hereby continued a West Virginia State Library Section under the Department of Tourism.

(b) The State Library Commission is continued as an advisory council to support the West Virginia State Library Section, and shall consist of the secretary as an ex officio voting member and six voting members.

(1) The Governor shall appoint, by and with the advice and consent of the Senate, the voting members of the commission each for a term of four years:

(A) No more than three appointed members may reside in the same congressional district; and

(B) The Governor shall make the initial appointment of State Library Commission members for staggered terms as follows: Two members, one from each congressional district, for a term of two

years; two members, one from each congressional district, for a term of three years; and two members, one from each congressional district, for a term of four years.

(2) No member of the State Library Commission may receive compensation for services rendered, nor be engaged or interested in the publishing business.

(3) On or before the expiration of the terms for which the members are appointed, the Governor shall appoint their successors.

(c) The secretary shall appoint a library section director, to carry out the duties and functions of the State Library Section outlined in this section. The library section director shall be qualified, with relevant experience. The library section director shall also serve as the Secretary of the State Library Commission for the purpose of board meetings.

(d) The State Library Commission shall advise the Secretary of the Department of Tourism and the library section director on carrying out certain duties and functions of the State Library Section, as provided in this section.

(e) *General authority of the State Library Section.* —

(1) The State Library Section shall provide assistance, advice, and counsel to all school, state-institutional, free and public libraries, and to all communities in the state which may propose to establish libraries, as to the best means of establishing and administering them, selecting and cataloging books, and other details of library management, and may send any of its members to aid in organizing such libraries or assist in the improvement of those already established.

(2) The State Library Section may:

(A) Receive gifts of money, books, or other property which may be used or held for the purpose or purposes given; and may purchase and operate traveling libraries under such conditions and rules as the commission deems necessary to protect the interests of

the state and best increase the efficiency of the service it is expected to render the public.

(B) Purchase suitable books for traveling libraries and distribute them as needed to those persons and places in the state without adequate public library service.

(C) Collect books and other suitable library matter and distribute the same among state institutions desiring the same.

(D) Issue and offer for sale printed material, such as lists and circulars of information, and in the publication thereof may cooperate with other state library commissions and libraries, in order to secure the more economical administration of the work for which it was formed.

(E) Conduct courses of library instruction and hold librarians' institutes in various parts of the state.

(F) Perform such other services on behalf of public libraries as it may consider to be in the best interest of the state.

(f) *West Virginia Program for Open Education Resources; material description.* —

(1) The State Library Section shall establish and maintain the West Virginia Program for Open Education Resources to encourage and facilitate the use of open education resource materials in both higher education and kindergarten through grade 12 in West Virginia schools.

(2) "Open education resource materials" means teaching, learning, and resource materials in any medium, digital or otherwise, that reside in the public domain or have been released under an open license that permits low-cost access, use, adaptation, and redistribution by others with no or limited restrictions.

(3) The State Library Commission may consult with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education, and the State Superintendent of Schools, or his or her designee, to:

(A) Ascertain what institutions or faculty are currently using open education resource material;

(B) Identify material currently associated with core general education courses and readily available for use by faculty and institutions;

(C) Identify any statutory or other impediments which interfere with selection and use of open education resource materials by administrators or teachers at all levels of instruction in West Virginia schools;

(D) Identify sources of potential grants for funding for teachers and institutions to use open education resource materials for classes and courses, and propose a competitive application system to award grant funding for those faculty and institutions seeking to use the open education resource materials;

(E) Establish a digital clearinghouse that will function as a publicly accessible database for open education resource material;

(F) Develop strategies to leverage further open education resource material to benefit higher education institutions and school systems, as well as private and foundation support for the project; and

(G) Report no later than July 1 of each year the program's findings, progress, and recommendations to the State Library Section, the Governor, and the chairs of the Legislature's House and Senate Committees on Education.

(g) *State Library Section—disposition of monetary gifts.* —

(1) If any sums of money are received by the State Library Section as gifts, they shall be paid into the State Treasury and used exclusively for carrying out the provisions of this section, and paying expenses of the State Library Section and the State Library Commission.

(2) The State Library Section shall expend no sums unless they are available by gift, appropriation, or otherwise.

(h) *Regional libraries and library areas — establishment and location.* —

(1) The State Library Commission is hereby authorized to develop a plan for the establishment and location of regional libraries, and library areas throughout the state, based on a detailed survey to be made by the State Library Commission of the needs of the various localities of the state. A region shall include two or more counties.

(2) On completion of such survey of any proposed region, the State Library Commission shall report their findings to the State Library Section and the state library director, who may refer the proposal to the county commissions or councils of all the counties included in such proposed region. The county commissions or councils may act upon such proposal by resolution, and the votes of a majority of each of the county commissions or councils of the counties included in the proposed region shall be necessary for the adoption of such proposal. The proposal may be amended and resubmitted as necessary.

(3) The State Library Section may, with advice and input from the State Library Commission, and as the state library director may consider necessary or beneficial:

(A) Establish, maintain, and operate a public library for the region;

(B) Appoint a librarian and the necessary assistants, and fix their compensation, such appointments to be based upon merit and efficiency as determined by the state library section director. The librarian shall hold a certificate from an approved school of library science and shall have had not less than three years of practical experience in library work. The state library section director may also remove said librarian and other assistants;

(C) Purchase books, periodicals, equipment, and supplies;

(D) Purchase sites and erect buildings, or lease suitable quarters, and have supervision and control of that property;

(E) Borrow books from and lend books to other libraries;

(F) Enter into contracts to receive service from, or give service to, libraries within or without the region and give service to municipalities without the region that have no libraries, or cooperate with and aid generally, without such contracts, public school, institutional, and other libraries;

(G) Make such bylaws, rules, and regulations not inconsistent with this article as may be expedient for the government of regional library areas and the regional libraries therein, and for the purpose of carrying out the provisions of this article; and

(H) Accept for the State of West Virginia any appropriations of money that may hereafter be made out of the federal treasury by an act or acts of Congress and to disburse such funds for the purpose of carrying out the provisions of this article, in accordance with §18-10-11 and §18-10-12 of this code.

(i) *Aid to libraries by State Library Section.*—

(1) The State Library Section may render such aid and assistance, financial, advisory or otherwise, to public, school, county, or regional libraries, whether established or maintained by the State Library Section or not, under such conditions and rules and regulations as the State Library Section may determine necessary to further the interests of the state and best increase the efficiency of the service it is expected to render the public.

(2) The State Library Commission may review and analyze the status of libraries across the state and advise the State Library Section on projects and libraries for which it has determined the development and support of will further the education of the people of the state as a whole and will thereby aid in the discharge of the responsibility of the state to encourage and foster education. The State Library Section may pay over and contribute to any board of library directors created and maintained pursuant to the provisions of this section or any special act of the Legislature such sum or sums of money as may be available from funds included in appropriations made for the State Library Section for that purpose.

(j) Collection and preservation of library data; surveys; employment of personnel; use of data. —

(1) The State Library Section may collect and preserve statistics and other data, concerning libraries of any sort located within this state; to make surveys relating to the needs or conditions of such libraries or the library conditions of any city, town, county, regional library area, or other subdivision of this state; and to publish the results and findings thereof in accordance with the provisions of this section.

(2) The State Library Section may employ necessary personnel for any of these purposes.

(3) Such data, surveys, and findings of the State Library Section shall be available to all school, public, institutional, regional, and other libraries within this state, whether proposed or established.

(k) Confidential nature of certain library records. —

(1) Circulation and similar records of any public library in this state which identify the user of library materials are not public records but shall be confidential and may not be disclosed except:

(A) To members of the library staff in the ordinary course of business, including paid employees and unpaid volunteers upon completing a written confidentiality agreement which shall prevent disclosure of circulation records, personal information, and similar records of any public library except to the extent allowed under this subsection and obtaining written permission from the library director of the library system wherein he or she will be working;

(B) Upon written consent of the user of the library materials or the user's parents or guardian if the user is a minor or ward; or

(C) Upon appropriate court order or subpoena.

(2) Any disclosure authorized by subdivision (1) of this subsection, or any unauthorized disclosure of materials made confidential by subdivision (1), does not in any way destroy the

confidential nature of that material, except for the purpose for which an authorized disclosure is made. A person disclosing material as authorized by subdivision (1) of this subsection is not liable therefor.

(1) *Library Facilities Improvement Fund.*—

(1) There is continued in the State Treasury a special fund known as the Library Facilities Fund. Expenditures from the fund shall be for the purposes set forth in this section. The fund shall be administered by the State Library Section.

(2) The fund shall consist of moneys received from the following sources:

(A) All appropriations made by the Legislature to the fund;

(B) Any moneys available from sources outside the State Library Section;

(C) Repayment of loans made by the State Library Section pursuant to this section; and

(D) All interest and other income earned from investment of moneys in the fund.

(3) The State Library Section shall utilize moneys in the fund to support public library facilities construction, renovation, maintenance, and improvement projects. The State Library Section shall evaluate potential recipient projects of funds from the fund on a competitive basis.

(A) The State Library Section may provide loans to public libraries to support energy savings and critical maintenance projects with moneys in the fund.

(B) With the exception of loans made under this section, the State Library Section may not expend any money from the fund toward a particular project unless the proposed expenditure is matched on a dollar-for-dollar basis by other sources.

(4) The State Library Section shall propose a rule for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this section. The rule shall contain at least the following:

(A) A process for submitting and reviewing proposals;

(B) The content of proposals;

(C) Criteria for evaluating proposals; and

(D) Other provisions the State Library Section considers necessary to administer the program in accordance with this section.

(5) Any balance, including accrued interest and any other returns, in the fund at the end of each fiscal year will not expire to the General Revenue Fund but remain in the fund and be expended for the purposes provided by this section.

(6) In any calendar year, the State Library Section may not allocate an amount in excess of four percent of the balance of the fund on December 31 of the immediately preceding calendar year for administrative expenses.

(7) The State Library Section may invest any or all of the balance of the fund with the state's Consolidated Investment Fund.

(m) Any rules promulgated by the Library Commission will remain in full force and effect until amended, repealed, or superseded by another rule promulgated by the Library Commission or State Library Section.

§29-1-9. Administrative section; director.

The purposes and duties of the administrative section are to provide centralized support to the division in all areas of operations.

The secretary shall appoint a director of the administrative section, to serve at the will and pleasure of the secretary, who is qualified, with relevant experience.

With approval of the secretary, the director of the administrative section shall establish professional positions within the section.

§29-1-10. Division employees classified by civil service; exceptions.

[Repealed.]

§29-1-11. Power to accept and receive funds; power to apply for grants; disbursal of funds; restrictions on expenditure; disposition of funds heretofore received or appropriated.

(a) The secretary may, in the name of the State of West Virginia, accept and receive grants, appropriations, gifts, bequests and funds from any public or private source for the purpose of carrying out the duties and purposes of this article.

(b) The secretary may, through the, apply for grants from the federal government, private foundations and any other source for the purposes of this article.

(c) All funds received from any source shall be paid into the Treasury of the state and disbursed upon warrant by the State Auditor following requisition by the division. The requisitions shall be signed by the secretary or by another person as the secretary may authorize by written document deposited with the Auditor or, in the event of emergency, by the Governor or the Governor's designee.

(d) No funds or gifts received from any source shall be expended or used for any purpose other than that intended as evidenced by a positive and affirmative declaration or by a negative restriction or limitation.

(e) The department may assist in the promotion and operation of an annual state fair and other regional or local fairs and festivals entitled to aid when funds are available and to expend those funds for the support and development of fairs and festivals.

(f) All federal or state funds received to provide grants-in-aid or awards to further the purposes of this article shall be approved and distributed by the secretary.

§29-1-12. Publication of materials; agreements.

The department shall have the power, responsibility and duty to publish or republish material of prehistorical, historical, archaeological, architectural or cultural interest. The department may sell such publications as well as postcards and other items of such interest at the state museum or any other site or property administered by the state or at any special event sponsored by the state. The department shall have the right to enter into agreements with responsible individuals, private historical, archaeological, architectural or cultural associations, foundations or similar organizations or any agency of the federal, state or local government for the purpose of carrying out its purposes or for raising money to fund the functions of the department under this article.

§29-1-13. Land; control and disposal; rules and regulations.

All land owned or leased by the department pursuant to this article shall be titled in the name of the public land corporation of West Virginia but shall be controlled, administered and supervised by the department. The secretary may sell or dispose of any real or personal property which, in his or her opinion, does not have sufficient prehistorical, historical, archaeological, architectural or cultural value to justify its retention.

The secretary shall have the power to make and promulgate rules and regulations relating to the general management and administration of this article.

§29-1-14. Washington-Carver Camp; prohibition of disposition or removal of minerals without authorization by the Legislature.

Washington-Carver Camp in Fayette County, heretofore transferred to the public land corporation under the control, administration, and supervision of the department, shall continue under the department's control, administration and supervision.

The department shall undertake to develop such cultural and multicultural, artistic, humanistic and educational programs at the camp as will serve and benefit the citizens of the state and the many cultures represented therein. In order to ensure the maximum reasonable utilization of that portion of the camp under its jurisdiction, the department shall, during times the camp is not being used for the department's purposes, make the camp available, under such terms as the department deems proper, to any other agency of government or nonprofit group desiring to use the camp. The camp shall retain the name "Camp Washington-Carver" as indicative of its heritage of serving the black citizens of the state. The department is authorized to provide necessary and suitable equipment and other resources for implementing the provisions of this section.

No minerals may be assigned, leased or otherwise encumbered, sold, mined, or removed with respect to the property heretofore transferred or the mineral rights retained without specific authorization by the Legislature.

§29-1-15. Development or improvement on land; State Historic Preservation Office; rules and regulations.

All development or improvement on land, including any disturbance in a right-of-way, construction project, or infrastructure project, subject to review by the State Historic Preservation Office or by any other section or commission listed in §29-1-1(b) of this code for prehistorical, historical, archaeological, architectural, or cultural value shall be conducted in the most expedient manner possible. The department shall not add any additional impediment to such review beyond those required by applicable Federal laws, rules, and regulations and shall have no authority to comment, regulate, or otherwise cause another governmental entity to comment upon or regulate, that activity, except in consideration for primacy or continued federal funding.

The secretary shall have the power to make and promulgate rules in in conformity with this section, and the secretary shall modify, upon the effective date of this legislation, any active rule in conflict with the provisions of this section.

CHAPTER 137

**(Com. Sub. for H. B. 2152 - By Delegates Burkhammer,
Leavitt, and Hott)**

[Passed April 9, 2025; in effect 90 days from passage (July 8, 2025)]

[Approved by the Governor on April 25, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding a new article, designated §12-10-1, §12-10-2, and §12-10-3, relating to prompt payment by state agencies of certain obligations; providing a short title; defining terms; providing that grantees and vendors shall be entitled to prompt payment upon presentation to a state agency of a legitimate claim for payment; determining the date a legitimate claim for payment is considered received by a state agency; requiring an agency to notify the State Auditor when it has violated this act; allowing vendors and grantees to notify the State Auditor when an agency has violated this act; and requiring the State Auditor to publish a list of noncompliant agencies on the State Auditor's website and update the list on at least a monthly basis; providing the timeline in which state agencies shall process payments; providing the timeline in which state agencies shall process payments for other agencies; and providing for exceptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. PROMPT PAYMENT ACT OF 2025.

§12-10-1. Short title.

This article shall be known and cited as the "Prompt Payment Act of 2025".

§12-10-2. Definitions.

The words defined in this section have the meanings given them for purposes of this article, unless the context clearly requires otherwise.

“Grantee” means any entity receiving a state grant, including a state spending unit, local government, corporation, partnership, association, individual, or other legal entity.

“Legitimate claim for payment” means:

(1) A notification of an entitlement to a disbursement of state funds pursuant to an awarded state grant; and

(2) A vendor’s legitimate uncontested invoice for commodities or services provided to any state spending unit.

“Payment” means:

(1) A disbursement of funds to a grantee pursuant to a state grant; and

(2) A state agency’s payment, via check, state warrant, purchasing card transaction, or electronic payment, of a legitimate uncontested invoice for commodities or services.

“State agency” means any agency, department, board, office, bureau, commission, authority or any other entity of the executive, judicial, elected, or legislative branch of state government.

“State grant” means funding provided by a grantor, regardless of the original source of the funds, to a grantee upon application for a specific purpose. The term “state grant” does not include:

(1) Payments for commodities and services purchased by a state spending unit;

(2) Compensation to state employees and public officials;

(3) Reimbursements to state employees and public officials for travel or incidental expenses;

(4) Grants of student aid;

(5) Government transfer payments;

(6) Direct benefits provided under state insurance and welfare programs;

(7) Funds reimbursed to a person for expenditures made for qualified purposes when receipts for the expenditures are required prior to receiving the funds;

(8) Retirement benefits;

(9) Federal pass-through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U.S.C. § 7501 *et seq.*, and the funds required to match the federal funds;

(10) Distributions to volunteer and part-volunteer fire departments and fire companies made pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code;

(11) Money received from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code; and

(12) Grants made by the West Virginia Water Development Authority.

“Vendor” means any person or entity that may, through contract or other means, supply the state or its subdivisions with commodities or services, and lessors of real property: *Provided*, That employees of the state shall not be considered vendors under this article.

§12-10-3. Payment of legitimate claims for payment.

(a) Every grantee and vendor shall be entitled to prompt payment upon presentation to a state agency of a legitimate claim for payment.

(b)(1) For grants awarded on or after July 1, 2025, and for purchases of commodities or services made on or after July 1, 2025, a payment shall be issued in payment thereof within 45 days

after a legitimate claim for payment is received by the state agency that has awarded the grant or received the commodities or services.

(2) For purposes of this section, a legitimate claim for payment shall be deemed to be received by a state agency on the date on which the legitimate claim for payment is marked as received by the state agency, the date of the postmark made by the United States postal service as evidenced on the envelope in which the legitimate claim for payment is mailed, or the date the legitimate claim for payment is logged received or confirmed on an electronic mailbox or messaging system, whichever is earlier, unless the grantee or vendor can provide sufficient evidence that the legitimate claim for payment was received by the state agency on an earlier date: *Provided*, That in the event an invoice is received by a state agency prior to the date on which the commodities or services covered by the invoice are delivered and accepted or fully performed and accepted, the invoice shall be deemed to be received on the date on which the commodities or services covered by the invoice were actually delivered and accepted or fully performed and accepted.

(c) An agency that issues a payment after 45 days, in violation of this section, shall report the violation to the State Auditor. A vendor or grantee who has not received a payment within 45 days, in violation of this section, may report that violation to the State Auditor. The State Auditor shall make a list of state agencies that are in violation of this section publicly available on its website and update the list on at least a monthly basis.

(d) The state agency initially receiving a legitimate claim for payment shall disburse the grant funds or process the invoice within 10 business days from its receipt.

(e) Any other state agency charged by law with processing a state agency's requisition for payment of a legitimate uncontested invoice shall either process the claim or reject it for good cause within 10 business days after such processing state agency receives it.

(f) The provisions of this article do not apply to any grantee or vendor who is debarred, whose payments are required to be offset

and intercepted to a state or federal agency, or who is otherwise ineligible to receive payment from the state by any act provided for in this code.

(g) Nothing in this article should be construed to limit the right of a state agency to refuse illegitimate, erroneous, fraudulent, or disputed claims for payment.

CHAPTER 138

(Com. Sub. for H. B. 2172 - By Delegate Worrell)

[Passed April 4, 2025; in effect 90 days from passage (July 3, 2025)]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §30-20-4 of the Code of West Virginia, 1931, as amended, relating to the Board of Physical Therapy; adding an athletic trainer to the board; and establishing a process to break a tie vote.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20. PHYSICAL THERAPISTS.

§30-20-4. West Virginia Board of Physical Therapy.

(a) The West Virginia Board of Physical Therapy is continued.

(b) The board shall consist of the following members:

(1) Five physical therapists;

(2) One physical therapist assistant;

(3) One person who is a certified athletic trainer; and

(4) One citizen member, who is not licensed under the provisions of this article and who does not perform any services related to the practice of the professions regulated under the provisions of this article or have a financial interest in any health care profession, for a term of three years.

(c) After the initial appointment term, the term shall be for five years. Appointments to the board shall be made by the Governor by and with the advice and consent of the Senate.

(d) A licensed member of the board, at the time of his or her appointment, shall have held a license in this state for a period of not less than five years immediately preceding the appointment.

(e) A member of the board shall be a resident of this state during the appointment term.

(f) A member may not serve more than two consecutive full terms. A member may continue to serve until a successor has been appointed and has qualified.

(g) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the vacancy.

(h) The Governor may remove a member from the board for neglect of duty, incompetency or official misconduct.

(i) A licensed member of the board immediately and automatically forfeits membership to the board if his or her license to practice is suspended or revoked.

(j) A member of the board immediately and automatically forfeits membership to the board if he or she is convicted of a felony under the laws of any jurisdiction or becomes a nonresident of this state.

(k) The board shall elect annually one of its members as chairperson who serves at the will of the board.

(l) In the event of a tie vote on any matter properly brought before the board, the chairperson shall cast one additional vote to break the tie. If the chairperson is recused or absent, the longest-serving board member who is present and not recused shall cast one additional vote.

(m) A member of the board is entitled to compensation and expense reimbursement in accordance with article one of this chapter.

(n) A majority of the members of the board constitutes a quorum.

(o) The board shall hold at least two annual meetings. Other meetings may be held at the call of the chairperson or upon the written request of two members, at the time and place as designated in the call or request.

(p) Prior to commencing his or her duties as a member of the board, a member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

CHAPTER 139

(Com. Sub. for H. B. 2397 - By Delegates Hillenbrand, Funkhouser, Masters, Ridenour, Horst, Brooks, Hite, Moore, Mazzocchi, Cooper, and B. Smith)

[Passed April 9, 2025; in effect 90 days from passage (July 8, 2025)]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §7-5-4 of the Code of West Virginia, 1931, as amended, relating to modifying the process for designating signatories for certain expenditures from the county treasury by a county sheriff when two or more of the designated signatories are family or household members.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. FISCAL AFFAIRS.

§7-5-4. Payment of money out of county treasury; signing of orders by mechanical or electrical devices; process when two or more designated signatories are family or household members; forgery; penalty.

(a) Money may not be paid by the sheriff out of the county treasury except upon an order signed by the president of the county commission and the county clerk, and properly endorsed. In counties having a population in excess of 50,000 as shown by the last preceding federal census, such signatures may be made by means of such mechanical or electrical device as the county court may select. The mechanical or electrical device utilized for making the signatures of the president and clerk shall be safely kept in the office of the county clerk so that no one has access except the members of the county court, the county clerk, and such of their respective employees as may be authorized to have access. The mechanical or electrical device

utilized for making the sheriff's signature shall be safely kept in the sheriff's office so that no one has access except the sheriff and such of his or her deputies as may be authorized to have access.

(b) In the event that two or more individuals among the county commission president, sheriff, and county clerk, are family or household members, alternate signatories shall be designated, as follows:

(1) The county commission shall vote to designate another county commissioner who is not a family or household member of any other required signatory to sign for the president;

(2) The chief tax deputy shall sign for the sheriff. If the chief tax deputy is a family or household member of any other signatory, then the county commission shall vote to appoint a resident of the county to serve as a substitute signatory; and

(3) The county clerk is not subject to substitution.

(c) As used in this section, "family or household member" has the same meaning as set forth in §48-27-204 of this code.

(d) If any person, other than the persons authorized to sign by this section, signs the name of the county commission president, county clerk, or sheriff, using any mechanical or electrical device, or otherwise, on any warrant, order, or check, or knowingly utters or attempts to employ as true the forged warrant, order, or check, he or she is guilty of a felony and, upon conviction, shall be confined in the penitentiary not fewer than two years and not more than 10 years.

CHAPTER 140

(H. B. 3277 - By Delegate Hite)

[Passed April 12, 2025; in effect from passage]
[Approved by the Governor on April 28, 2025.]

AN ACT to amend and reenact §16-29A-3 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Hospital Finance Authority Act; and providing definitions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE AUTHORITY ACT.

§16-29A-3. Definitions.

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

"Authority" means the West Virginia Hospital Finance Authority created by section four of this article, the duties, powers, responsibilities and functions of which are specified in this article;

"Board" means the West Virginia Hospital Finance Board created by section four of this article, which shall manage and control the authority;

"Bond" means a revenue bond issued by the authority to effect the purposes of this article;

"Construction" means and includes new construction, reconstruction, enlargement, improvement and providing furnishings or equipment;

"Direct provider of health care" means a person or organization whose primary current activity is the provision of health care to individuals and includes a licensed or certified physician, osteopath, dentist, nurse, podiatrist or physician's assistant or an organization comprised of these health professionals or employing these health professionals;

"Hospital" means a corporation, association, institution or establishment for the care of those who require medical treatment, which may be a public or private corporation or association, or state-owned or operated establishment and specifically includes nursing homes which are licensed under chapter 16B of this code or those facilities certified under the Social Security Act as intermediate care facilities for individuals with an intellectual disability;

"Hospital facilities" means any real or personal property suitable and intended for, or incidental or ancillary to, use by a hospital and includes: Outpatient clinics; laboratories; laundries; nurses', doctors' or interns' residences; administration buildings; facilities for research directly involved with hospital care; maintenance, storage or utility facilities; parking lots and garages; and all necessary, useful or related equipment, furnishings and appurtenances and all lands necessary or convenient as a site for the foregoing and specifically includes any capital improvements to any of the foregoing. "Hospital facilities" specifically includes office facilities not less than 80% of which are intended for lease to direct providers of health care and which are geographically or functionally related to one or more other hospital facilities, if the authority determines that the financing of the office facilities is necessary to accomplish the purposes of this article;

"Hospital loan" means a loan made by the authority to a hospital and specifically includes financings by the authority for hospital facilities pursuant to lease-purchase agreements, installment sale or other similar agreements;

"Note" means a short-term promise to pay a specified amount of money, payable and secured as provided pursuant to this article and issued by the authority to effect the purposes of this article;

"Project costs" means the total of the reasonable or necessary costs incurred for carrying out the works and undertakings for the acquisition or construction of hospital facilities under this article. "Project costs" includes, but is not limited to, all of the following costs: The costs of acquisition or construction of the hospital facilities; studies and surveys; plans, specifications, architectural and engineering services; legal, organization, marketing or other special services; financing, acquisition, demolition, construction, equipping and site development of new and rehabilitated buildings; rehabilitation, reconstruction, repair or remodeling of existing buildings; interest and carrying charges during construction and before full earnings are achieved and operating expenses before full earnings are achieved or a period of one year following the completion of construction, whichever occurs first; and a reasonable reserve for payment of principal of and interest on bonds or notes of the authority. "Project costs" shall also include reimbursement of a hospital for the foregoing costs expended by a hospital from its own funds or from money borrowed by the hospital for such purposes before issuance and delivery of bonds or notes by the authority for the purpose of providing funds to pay the project costs. "Project costs" also specifically includes the refinancing of any existing debt of a hospital necessary in order to permit the hospital to borrow from the authority and give adequate security for the hospital loan. The determination of the authority with respect to the necessity of refinancing and adequate security for a hospital loan is conclusive;

"Revenue" means any money or thing of value collected by, or paid to, the authority as principal of or interest, charges or other fees on hospital loans or any other collections on hospital loans made by the authority to hospitals to finance, in whole or in part, the acquisition or construction of any hospital facilities or other money or property which is received and may be expended for or pledged as revenues pursuant to this article;

"Secretary" means the Secretary of the Department of Health;

"Veterans skilled nursing facility" means a skilled nursing care facility constructed and operated to serve the needs of veterans of the Armed Forces of the United States who are citizens of this state.

CHAPTER 141

(Com. Sub. for H. B. 3279 - By Delegates Criss and Riley)

[Passed April 12, 2025; in effect from passage]

[Approved by the Governor on April 30, 2025.]

AN ACT to amend and reenact §18B-2A-1 and §18B-2A-2 of the Code of West Virginia, 1931, as amended, relating to institutional boards of governors; amending legislative findings; increasing number of Board of Governors members at West Virginia University; clarifying that elected faculty, student, and classified or non-classified employees serve as nonvoting advisory members; increasing the number of lay members appointed by the Governor to West Virginia University's Board of Governors; requiring one person of the West Virginia University Board of Governors and of the West Virginia State University Board of Governors to have a background in agriculture, forestry, or the agricultural or silvicultural sciences; clarifying that graduates of West Virginia Institute of Technology of West Virginia University and West Virginia Potomac State College of West Virginia University have a representative serve on West Virginia University's Board of Governors; adding a requirement that the Governor consider the needs of the state of West Virginia and its citizens in making appointments to the institutional board of governors; and making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Findings; composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

(a) *Findings.*

The Legislature finds that the State of West Virginia is served best when the membership of each governing board is informed by the following:

(1) The academic expertise and institutional experience of faculty members and a student of the institution governed by the board;

(2) The technical or professional expertise and institutional experience of a classified or non-classified employee of the institution governed by the board;

(3) An awareness and understanding of the issues facing the institution governed by the board; and

(4) The diverse perspectives that arise from a membership that is balanced and representative of West Virginia and its citizens; and

(5) For West Virginia's land grant institutions at West Virginia University and West Virginia State University, focused on serving the needs of West Virginia and its citizens.

(b) *Boards of governors established.*

A board of governors is continued at each of the following institutions: Bluefield State University, Blue Ridge Community and Technical College, BridgeValley Community and Technical College, Concord University, Eastern West Virginia Community and Technical College, Fairmont State University, Glenville State University, Mountwest Community and Technical College, Marshall University, New River Community and Technical College, Pierpont Community and Technical College, Shepherd University, Southern West Virginia Community and Technical College, West Liberty University, West Virginia Northern Community College, the West Virginia School of Osteopathic Medicine, West Virginia State University, West Virginia University and West Virginia University at Parkersburg.

(c) *Board membership.*

(1) An appointment to fill a vacancy on the board or reappointment of a member who is eligible to serve an additional term is made in accordance with the provisions of this section.

(2) The Board of Governors for Marshall University consists of 16 persons. The Board of Governors for West Virginia University consists of 19 persons. The boards of governors of the other state institutions of higher education consist of 12 persons.

(3) Each board of governors includes the following members:

(A) A full-time member of the faculty with the rank of instructor or above duly elected by the faculty of the respective institution, who shall serve as a nonvoting, advisory member;

(B) A member of the student body in good academic standing, enrolled for college credit, and duly elected by the student body of the respective institution, who shall serve as a nonvoting, advisory member; and

(C) A member from the institutional classified or non-classified employees duly elected by the classified or non-classified employees of the respective institution, who shall serve as a nonvoting, advisory member.

(4) For the Board of Governors at Marshall University, 13 lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section;

(5) For the Board of Governors at West Virginia University, 15 lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section, and a full-time faculty member representing the extension service at the institution or a full-time faculty member representing the health sciences, selected by the faculty senate, who shall serve as a nonvoting, advisory member.

(6) For each board of governors of the other state institutions of higher education, nine lay members appointed by the Governor,

by and with the advice and consent of the Senate, pursuant to this section.

(A) Of the nine members appointed by the Governor, no more than five may be of the same political party. Of the 13 members appointed by the Governor to the governing board of Marshall University, no more than eight may be of the same political party. Of the 15 members appointed by the Governor to the governing board of West Virginia University, no more than nine may be of the same political party.

(B) Of the nine members appointed by the Governor, at least five shall be residents of the state. Of the 13 members appointed by the Governor to the governing board of Marshall University, at least eight shall be residents of the state. Of the 15 members appointed by the Governor to the governing board of West Virginia University, at least eight shall be residents of the state.

(C) Of the 15 members appointed by the Governor to the governing board of West Virginia University, one shall be specifically designated as a representative of agriculture, forestry, or the agricultural or silvicultural sciences and shall have a background in one or more such fields. One shall be a graduate of the West Virginia University Institute of Technology. One shall be a graduate of Potomac State College of West Virginia University.

(D) Of the nine members appointed by the Governor to the governing board of West Virginia State University, one shall be specifically designated as a representative of agriculture, forestry, or the agricultural or silvicultural sciences and shall have a background in one or more such fields.

(7) In making lay appointments, the Governor shall consider the institutional mission and membership characteristics including the following:

(A) The need for individual skills, knowledge and experience relevant to governing the institution;

(B) The need for awareness and understanding of institutional priorities, opportunities, and challenges, including those related to research, teaching and outreach;

(C) The value of gender, racial and ethnic diversity;

(D) The value of achieving balance in gender and diversity in the racial and ethnic characteristics of the lay membership of each board; and

(E) The needs of the State of West Virginia and its citizens.

(d) *Board member terms.*

(1) The student member serves for a term of one year. Each term begins on July 1.

(2) The faculty member serves for a term of two years. Each term begins on July 1. Faculty members are eligible to succeed themselves for one additional term, not to exceed a total of four consecutive years.

(3) The member representing classified or non-classified employees serves for a term of two years. Each term begins on July 1. Members representing classified or non-classified employees are eligible to succeed themselves for one additional term, not to exceed a total of four consecutive years.

(4) The appointed lay citizen members serve terms of four years each and are eligible to succeed themselves for no more than one additional term, except that citizen members who are appointed to fill unexpired terms are eligible to succeed themselves for two full terms after completing an unexpired term.

(5) A vacancy in an unexpired term of a member shall be filled for the unexpired term within thirty days of the occurrence of the vacancy in the same manner as the original appointment or election. Except in the case of a vacancy, all elections are held and all appointments are made no later than June 30 preceding the commencement of the term. Each board of governors shall elect one of its appointed lay members to be chairperson in June of each

year. A member may not serve as chairperson for more than four consecutive years.

(6) The appointed members of the boards of governors serve staggered terms of up to four years except that four of the initial appointments to the governing boards of community and technical colleges that became independent July 1, 2008, are for terms of two years and five of the initial appointments are for terms of four years.

(e) *Board member eligibility, expenses.*

(1) A person is ineligible for appointment to membership on a board of governors of a state institution of higher education under the following conditions:

(A) For a baccalaureate institution or university, a person is ineligible for appointment who is an officer, employee or member of any other board of governors within this state; an employee of any institution of higher education within this state; an officer or member of any political party executive committee; the holder of any other public office or public employment under the government of this state or any of its political subdivisions; an employee of any affiliated research corporation created pursuant to article twelve of this chapter; an employee of any affiliated foundation organized and operated in support of one or more state institutions of higher education; or a member of the council or commission: *Provided*, That if an appointee is an employee or board member of an out-of-state higher education institution, there is no apparent conflict of interest caused by the individual serving in both capacities. This subsection does not prevent the representative from the faculty, classified or non-classified employees, students, or the superintendent of a county board of education from being members of the governing boards.

(B) For a community and technical college, a person is ineligible for appointment who is an officer, employee or member of any other board of governors within this state; a member of a board of visitors of any public institution of higher education; an employee of any institution of higher education within this state;

an officer or member of any political party executive committee; the holder of any other public office, other than an elected county office, or public employment, other than employment by the county board of education, under the government of this state or any of its political subdivisions; an employee of any affiliated research corporation created pursuant to §18B-12-1 *et seq.* of this code; an employee of any affiliated foundation organized and operated in support of one or more state institutions of higher education; or a member of the council or commission: *Provided*, That if an appointee is an employee or board member of an out-of-state higher education institution, there is no apparent conflict of interest caused by the individual serving in both capacities. This subsection does not prevent the representative from the faculty, classified or non-classified employees, or students from being members of the governing boards.

(2) Before exercising any authority or performing any duties as a member of a governing board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the Constitution of West Virginia and the certificate thereof shall be filed with the Secretary of State.

(3) A member of a governing board appointed by the Governor may not be removed from office by the Governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the Governor.

(4) The members of the board of governors serve without compensation, but are reimbursed for all reasonable and necessary expenses actually incurred in the performance of official duties under this article upon presentation of an itemized sworn statement of expenses.

(5) The president of the institution shall make available resources of the institution for conducting the business of its board of governors. All expenses incurred by the board of governors and the institution under this section are paid from funds allocated to the institution for that purpose.

§18B-2A-2. Meetings.

(a) The boards of Governors shall hold at least six meetings in every fiscal year, including an annual meeting each June for the purpose of electing officers. (b) One more than half the number of voting members currently serving on an institutional board of Governors shall constitute a quorum. A quorum being present, a majority vote shall be necessary to pass upon matters properly before the institutional board of Governors. (c) The boards of Governors may set aside time as they consider appropriate to afford administrators, faculty, students and classified staff an opportunity to discuss issues affecting these groups.

CHAPTER 142

(H. B. 3389 - By Delegate W. Clark)

[Passed April 10, 2025; in effect 90 days from passage (July 9, 2025)]

[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §18-10G-2 of the Code of West Virginia, 1931, as amended, relating to excluding the Department of Tourism from the agencies required to have their food service facilities operated by the Division of Vocational Rehabilitation.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 10G. PROVIDING OF FOOD SERVICE IN PUBLIC
OFFICE BUILDINGS BY THE WEST VIRGINIA
DIVISION OF VOCATIONAL REHABILITATION.**

§18-10G-2. Definitions.

For the purposes of this article:

(a) "Active participation" means an ongoing process of negotiations between the Division of Vocational Rehabilitation and the Committee of Blind Vendors to achieve joint planning of policies, procedures, and standards affecting the overall operation of the Food Services Facilities Program prior to their implementation by the Division of Vocational Rehabilitation. It is understood that the Division of Vocational Rehabilitation bears final responsibility for the administration and operation of the program, including the assurance of active participation by the Committee of Blind Vendors;

(b) "Blind person" means a person whose central acuity does not exceed 20/200 in the better eye with correcting lenses or whose

visual acuity, if better than 20/200, but is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of not greater than twenty degrees. In determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or an optometrist, whichever the individual selects;

(c) "Blind vendor" means a blind licensee who is operating a food service facility on federal, state, public, or private property;

(d) "Committee of Blind Vendors" means an officially constituted body functioning in an advisory capacity of the Division of Vocational Rehabilitation's Food Services Facilities Program. This committee is composed of licensed blind vendors, elected biennially and established, constituted, and maintained in accordance with applicable federal regulations;

(e) "Food service facility" means and includes a restaurant, cafeteria, snack bar, vending machine for dispensing foods, beverages, confections, tobacco, or other products for human consumption, and other facilities for selling or providing goods and services for the purposes customarily offered in connection with the operation of any of the foregoing. The term "food service facility" does not include goods and services sold, dispensed from, or provided by the Veterans Administration and the facilities for selling, dispensing, or providing thereof;

(f) "Governmental agency" means and includes the State of West Virginia, each instrumentality and agency thereof, and every county, city, and town within, and every political subdivision within the state, except county boards of education, the Higher Education Policy Commission, the Council for Community and Technical College Education, the Department of Health, the Department of Commerce, the Department of Tourism, and the Department of Corrections;

(g) "Licensee" means all persons licensed under the Division of Vocational Rehabilitation to operate food service facilities under the Randolph/Sheppert Act, Title XX, United States Code 107 *et seq.*;

(h) "Public office building" means and includes the State Capitol, all county courthouses, all city and town halls, all buildings used primarily for governmental offices of the state, and any county, city, and town within the state, but does not include buildings used for any state institution of higher education, the Department of Health, the Department of Commerce, the Department of Tourism, or the Department of Corrections;

(i) "Vending machine income" means receipts other than those of a blind licensee from the operation of vending machines on public property after deducting the cost of goods sold when machines are operated, serviced, or maintained by, or with the approval of the Division of Vocational Rehabilitation, or commissions paid to other than a licensee by a commercial vending concern which operates, services, or maintains vending machines on public property for or with the approval of the Division of Vocational Rehabilitation; and

(j) "Designee" means an individual or an organization of individuals legally constituted and under the jurisdiction of the Division of Vocational Rehabilitation doing business in the State of West Virginia to assist a state agency with the administration and supervision of the food services facilities program.

CHAPTER 143

(Com. Sub. for H. B. 3411 - By Delegates Hanshaw (Mr. Speaker), Gearheart, Riley, and Rohrbach)

[Passed April 12, 2025; in effect from passage]

[Approved by the Governor on April 28, 2025.]

AN ACT to repeal §4-7-1, §4-7-2, §4-7-3, §4-7-4, §4-7-5, §4-7-6, §4-7-7, §4-7-8, §4-7-9, §4-7-10 and §4-7-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §4-10-3 of said code; to repeal §4-10-4 of said code; to amend and reenact §4-10-5, §4-10-6, §4-10-7, §4-10-9, §4-10-11 and §4-10-13 of said code; to repeal §4-13-1, §4-13-2, §4-13-3, §4-13-4, §4-13-5, §4-13-6, and §4-13-7 of said code; to amend and reenact §4-14-1, §4-14-2, and §4-14-3 of said code; to repeal §4-15-1 of said code; to amend and reenact §5-24-3 of said code; to amend and reenact §5B-2B-2 of said code; to repeal §5B-2B-4a of said code; to repeal §5B-2B-7 of said code; to amend and reenact §5B-3-2 of said code; to repeal §12-6D-4 of said code; to repeal §15-9C-1, §15-9C-2, §15-9C-3, §15-9C-4, §15-9C-5 and §15-9C-6 of said code; to repeal §16-29E-4 of said code; to repeal §17-2B-1, §17-2B-2, §17-2B-3, §17-2B-4, §17-2B-5 and §17-2B-6 of said code; to repeal §18B-14-1 and §18B-14-9 of said code; to repeal §21-5E-1, §21-5E-2, §21-5E-3, §21-5E-4, §21-5E-5 and §21-5E-6 of said code; to repeal §22-26-5 of said code; to repeal §29-1B-1, §29-1B-2, §29-1B-3, §29-1B-4, §29-1B-5, §29-1B-6 and §29-1B-7 of said code; to amend and reenact §29A-3A-11 of said code; and to repeal §31-20-26 of said code, relating to commissions; removing legislative members; making technical changes throughout; and eliminating expired commissions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. LEGISLATIVE BUILDING COMMISSION.

§4-7-1. Definitions.

[Repealed.]

§4-7-2. Legislative building commission created; its composition; appointment of members; vacancies; election of officers; compensation and expenses of members.

[Repealed.]

§4-7-3. Powers and duties of commission generally.

[Repealed.]

§4-7-4. Commission granted power of eminent domain.

[Repealed.]

§4-7-5. Funds and expenditures of commission.

[Repealed.]

§4-7-6. Deposit and disbursement of funds of commission; security for deposits; audits.

[Repealed.]

§4-7-7. Contracts for construction of state legislative building, etc.; to be secured by bond; competitive bids required for contracts exceeding \$2,000; procedure.

[Repealed.]

§4-7-8. Management and control of state legislative building.

[Repealed.]

§4-7-9. Article not authority to create state debt.

[Repealed.]

§4-7-10. This article, article six, chapter five, and the state Constitution are only restrictions on construction, etc., of building.

[Repealed.]

§4-7-11. Severability.

[Repealed.]

ARTICLE 10. PERFORMANCE REVIEW ACT.

§4-10-3. Definitions.

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

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

"Agency review" means a review performed on an agency at the direction of the President of the Senate, the Speaker of the House of Delegates, or by recommendation of the joint standing committee pursuant to the provisions of this article.

"Committee" means the Joint Standing Committee on Government Organization.

"Compliance review" means a review for compliance with recommendations contained in a previous agency review or regulatory board review conducted pursuant to the provisions of this article and may include further inquiry of other issues as directed by the President, the Speaker, the committee, or the Joint Committee on Government and Finance.

"Department" means the departments created within the executive branch, headed by a secretary appointed by the Governor, as authorized by the Code of West Virginia.

"Department presentation" means a presentation by a department pursuant to the provisions of this article made at the direction of the President of the Senate or the Speaker of the House of Delegates.

"Division" means the Performance Evaluation and Research Division, the Post Audit Division, or any division of the Legislative Auditor's Office.

"Privatize" means a contract to procure the services of a private vendor to provide a service that is similar to, or in lieu of, a service provided by a state agency.

"Regulatory Board" means a board that regulates professions and occupations, created under the provisions of chapter 30 of this code.

"Regulatory Board Review" means a review performed on a regulatory board pursuant to the provisions of this article.

§4-10-4. Joint Committee on Government Operations.

[Repealed.]

§4-10-5. Powers and duties of the committee.

(a) To carry out the duties set forth in this article, the committee, any authorized employee of the committee, the Legislative Auditor or any employee of the division working at the direction of the committee, shall have access, including copying, to all records of every state agency in West Virginia.

(b) When furnishing information, agencies shall provide the information in the format in which it is requested, if the request is specific as to a preferred format.

(c) The committee may hold public hearings in furtherance of the purposes of this article, at such times and places within the state as desired. A member of the committee may administer oaths to persons testifying at such hearings or meetings.

(d) The committee may issue a subpoena, with the signature of either cochair of the committee and served in the manner provided by law, to summon and compel the attendance of witnesses and their examination under oath and the production of all books, papers, documents and records necessary or convenient to be examined and used by the committee in the performance of its duties.

(e) If any witness subpoenaed to appear at any hearing or meeting refuses or fails to appear or to answer questions put to him or her, or refuses or fails to produce books, papers, documents or records within his or her control when the same are demanded, the committee, in its discretion, may enforce obedience to its subpoena by attachment, fine or imprisonment, as provided in article one of this chapter, or may report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and the court shall compel obedience to the subpoena as though it had been issued by the court.

(f) Witnesses subpoenaed to attend hearings or meetings pursuant to the provisions of this article, except officers or employees of the state, shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury.

(g) The committee, subject to the approval of the Joint Committee on Government and Finance, may employ such persons as it considers necessary to carry out the duties and responsibilities under this article and may contract for outside expertise in conducting reviews.

(h) The committee may collect, and the agency or regulatory board shall promptly pay, the costs associated with conducting the reviews performed under this article, upon presentation of a statement for the costs incurred. All money received by the committee from this source shall be expended only for the purpose of covering the costs associated with such services, unless otherwise directed by the Legislature.

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

(a) At the direction of the President of the Senate or the Speaker of the House of Delegates, and upon notification from the division, a department shall prepare and make a presentation to the committee. The purpose of the presentation is to inform the Legislature as to the programs, activities, and financial situation of the department and to update and amend any information previously presented to the committee pursuant to this section. The presentation shall include:

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

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

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

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

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

(C) The number of employees of the agency for the immediate past 10 years;

(D) The budget for the agency for the immediate past 10 years;

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

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

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

(H) The extent to which the agency has encouraged public participation in the making of its rules and decisions and has encouraged interested persons to report to it on the impact of its

rules and decisions on the effectiveness, economy, and availability of services that it has provided;

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

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

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

§4-10-7. Agency review.

(a) The division shall conduct agency reviews of one or more state agencies each year. An agency review shall be conducted of each state agency at least once every 15 years. An agency review may be conducted more frequently than once in 15 years and may be conducted in the discretion, and at the direction, of the President of the Senate, the Speaker of the House of Delegates, or by recommendation of the joint standing committee.

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

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

(2) The number of employees of the agency for the immediate past 10 years;

(3) The budget for the agency for the immediate past 10 years;

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

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

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

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

(8) An analysis of any issues raised by any presentation by the department under whose purview the agency falls made pursuant to the provisions of this article;

(9) An analysis of any other issues as the committee, the President of the Senate, or the Speaker of the House of Delegates may direct; and

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

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

(d) A cost-benefit analysis authorized by this section may include:

(1) The tangible benefits of privatizing the service;

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

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

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

§4-10-9. Regulatory board review.

(a) The division shall conduct regulatory board reviews on each regulatory board to ascertain if there is a need for the continuation,

consolidation, or termination of the regulatory board as one of its duties.

(b) A regulatory board review shall be performed on each regulatory board at least once every 12 years. A regulatory board may be subject to a compliance review pursuant to the provisions of this article.

(c) When a new regulatory board is created, a date for a regulatory board review shall be included in the act that creates the board, within 12 years of the effective date of the act.

(d) The regulatory board review may include:

(1) Whether the board complies with the policies and provisions of chapter 30 of this code and other applicable laws and rules;

(2) Whether the board follows a disciplinary procedure which observes due process rights and protects the public interest;

(3) Whether the basis or facts that necessitated the initial licensing or regulation of a profession or occupation have changed, or other conditions have arisen that would warrant increased or decreased regulation;

(4) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the industry and individuals it regulates;

(5) Whether statutory changes are necessary to improve board operations to enhance the public interest;

(6) An analysis of any other issues the committee, the President of the Senate, the Speaker of the House of Delegates, or by recommendation of the joint standing committee.

(7) A recommendation as to whether the regulatory board under review should be continued, consolidated, or terminated.

§4-10-11. Compliance review.

(a) After an agency review or a regulatory board review, if the committee finds that an agency or a regulatory board needs further review, then the committee may request a compliance review.

(b) If the committee requests a compliance review for an agency or a regulatory board, then it must state, in writing, the specific reasons for the compliance review and its expected completion date.

§4-10-13. Disposition of agency or regulatory board assets, equipment and records after termination.

(a) On or before June 30 of the wind-up year, the terminated agency or regulatory board shall file a written statement with the Secretary of the Department of Administration and the division describing the disposition of its funds, assets, equipment and records.

(b) The division shall review the statement of the terminated agency or regulatory board and report the results of its review to the committee.

(c) Any unexpended funds of the terminated agency or regulatory board shall revert to the fund from which they were appropriated or, if that fund is abolished, to the General Revenue Fund.

(d) All remaining assets and equipment of a terminated agency or regulatory board shall be transferred to the secretary of the department of which it was a part or to the state agency for surplus property in the Department of Administration.

(e) The records of a terminated agency or regulatory board shall be deposited with the Department of Administration.

ARTICLE 13. WEST VIRGINIA SESQUICENTENNIAL OF THE AMERICAN CIVIL WAR COMMISSION AND FUND.

§4-13-1. Findings; West Virginia Sesquicentennial of the American Civil War Commission established; purpose.

[Repealed.]

§4-13-2. Membership; terms; filling vacancies; election of chair and vice chair.

[Repealed.]

§4-13-3. Expense reimbursement.

[Repealed.]

§4-13-4. Quorum; meetings.

[Repealed.]

§4-13-5. Advisory council.

[Repealed.]

§4-13-6. Powers; duties; limitation on duration of contracts.

[Repealed.]

§4-13-7. Termination of the commission.

[Repealed.]

**ARTICLE 14. LEGISLATIVE OVERSIGHT COMMISSION
ON DEPARTMENT OF TRANSPORTATION
ACCOUNTABILITY.**

§4-14-1. Findings, purpose and intent.

(a) The Legislature finds that:

(1) Investment in infrastructure is crucial to the well-being of West Virginians and West Virginia businesses;

(2) The state must spend funds wisely on infrastructure in order to get the best return on investment and must make long-term plans for investment;

(3) The federal government is an unpredictable and unreliable partner in providing consistent funding for infrastructure investment;

(4) The Legislature directed a Division of Highways performance and efficiency audit in 2015; and

(5) In order to maintain proper oversight to ensure that sufficient transportation planning is made, funds are spent wisely and efficiently, and the Department of Transportation is functioning appropriately, it shall report to the Legislative Oversight Commission on Department of Transportation Accountability.

(b) It is the intent of the Legislature that all actions taken pursuant to the provisions of this article by the Legislature and the Department of Transportation serve the following core set of principles:

(1) That all Department of Transportation infrastructure investments be coordinated to maximize efficiencies and minimize cost thereby addressing the needs of the citizens more effectively;

(2) That communication be facilitated among the various agencies within the Department of Transportation and between the department and the Legislature;

(3) That policy changes, not made by legislative rule, be discussed with the commission for purposes of coordinating those policies with stated goals;

(4) That programs or policies implemented in accordance with federal mandates be communicated to the commission;

(5) That in developing and implementing programs with private or federal grant moneys, the various agencies communicate

their efforts to the commission to ensure and facilitate future state funding; and

(6) That any Department of Transportation agencies exempted from rule-making review by federal or state statutes advise the commission of program changes which may affect infrastructure investment in West Virginia.

§4-14-2. Definitions.

As used in this article:

(1) "Agency" means each agency, authority, board, committee, commission or division of the Department of Transportation;

(2) "Commission" means the Legislative Oversight Commission on Transportation Accountability; and

(3) "Department" means the Department of Transportation.

§4-14-3. Creation of a Legislative Oversight Commission on Department of Transportation Accountability.

(a) There is hereby created a joint commission of the Legislature known as the Legislative Oversight Commission on Department of Transportation Accountability. The commission shall be composed of an equal number of senators and delegates, as appointed by the President of the Senate and the Speaker of the House of Delegates.

(b) Members of the commission shall receive such compensation and expenses as provided in article two-a, chapter four of this code, subject to the approval by the Joint Committee on Government and Finance.

ARTICLE 15. JOINT LEGISLATIVE COMMITTEE ON FLOODING.

§4-15-1. Establishing a Joint Legislative Committee on Flooding.

[Repealed.]

**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 24. WEST VIRGINIA FOREST MANAGEMENT
REVIEW COMMISSION.**

**§5-24-3. Commission continued; composition; appointment of
members.**

The West Virginia Forest Management Review Commission is continued for the purposes set forth in this article. This commission shall be comprised of an equal number of senators and delegates, as appointed by the President of the Senate and the Speaker of the House of Delegates, and four members to be representatives from the commercial forest industry in the state, and three members of the public-at-large. The members shall be appointed by the Governor, with the advice and consent of the Senate. The successor of each such appointed member shall be appointed for an overlapping term of six years, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed only to the remainder of such term. Each board member shall serve until the appointment of his or her successor.

**CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF
1985.**

**ARTICLE 2B. WEST VIRGINIA WORKFORCE
INVESTMENT ACT.**

§5B-2B-2. Definitions.

As used in this article, the following terms have the following meanings, unless the context clearly indicates otherwise:

"Board" means the West Virginia Workforce Development Board.

"Commission" or "Legislative Oversight Commission" means the Legislative Oversight Commission on Workforce Investment for Economic Development.

"Local area" means a local workforce investment area.

"Local board" means a local workforce development board.

"Team" means the workforce investment interagency collaborative team.

"WIOA" means the Workforce Innovation and Opportunity Act, 29 U. S. C. §3101, *et seq.*

§5B-2B-4a. Report to Legislature.

[Repealed.]

§5B-2B-7. Legislative oversight commission on workforce investment for economic development.

[Repealed.]

ARTICLE 3. WEST VIRGINIA ECONOMIC DEVELOPMENT STRATEGY: A VISION SHARED.

§5B-3-2. The Joint Commission on Economic Development.

(a) The joint commission on economic development is hereby continued. The commission shall be comprised of an equal number of senators and delegates, as appointed by the President of the Senate and the Speaker of the House of Delegates.

The commission may explore how West Virginia can:

(1) Invest in systems that build workforce skills and promote lifelong learning to ensure a competitive workforce;

(2) Enhance the infrastructure, communications and transportation needed to support the knowledge-based industries and electronic commerce;

(3) Reorganize government to deliver services more efficiently, using technology, privatization and partnerships with the private sector;

(4) Align state tax systems to meet the demands of the twenty-first century economy;

(5) Develop more uniform regulatory and tax systems to reduce complexity, eliminate market distortions and better protect consumers;

(6) Support entrepreneurs by streamlining business regulations, providing timely decisions and assisting firms in their search for venture capital;

(7) Promote university policies that encourage research and development and build intellectual infrastructure;

(8) Address quality-of-life concerns to attract new businesses and workers; and

(9) Accomplish the goals set forth in this article and any other goal related to economic development or workforce investment that the commission considers important.

(b) The commission may propose legislation necessary to accomplish its goals.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6D. WEST VIRGINIA ENTERPRISE RESOURCE PLANNING BOARD.

§12-6D-4. Steering Committee created; powers and authority.

[Repealed.]

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 9C. WEST VIRGINIA SENTENCING COMMISSION.

§15-9C-1. Legislative findings.

[Repealed.]

§15-9C-2. Creation of Sentencing Commission; purpose; composition.

[Repealed.]

§15-9C-3. Powers and duties of the commission.

[Repealed.]

§15-9C-4. Objectives of the commission.

[Repealed.]

§15-9C-5. Recommendations to Legislature.

[Repealed.]

§15-9C-6. Sunset.

[Repealed.]

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 29E. LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY.

§16-29E-4. Creation of a Legislative Oversight commission on health and human resources accountability.

[Repealed.]

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2B. TOLL ROAD STUDY COMMISSION.

§17-2B-1. Legislative findings and purposes.

[Repealed.]

§17-2B-2. Toll road study commission created; composition; appointment of members; chairman.

[Repealed.]

§17-2B-3. Compensation and expenses of commission members; expenses of commission.

[Repealed.]

§17-2B-4. Powers and duties of the commission.

[Repealed.]

§17-2B-5. Meetings of the commission; quorum.

[Repealed.]

§17-2B-6. Interpretation of article; termination of commission.

[Repealed.]

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 14. MISCELLANEOUS.

***§18B-14-1. Select committee on outcomes-based funding models in higher education.**

[Repealed.]

§18B-14-9. Legislative findings; establishment of study committee; membership; recommendations on higher education facilities.

[Repealed.]

CHAPTER 21. LABOR.

ARTICLE 5E. EQUAL PAY FOR EQUAL WORK FOR STATE EMPLOYEES.

§21-5E-1. Legislative findings and purpose.

[Repealed.]

§21-5E-2. Definitions.

[Repealed.]

***NOTE:** This section was also amended by H. B. 3411 (Chapter 143), which passed subsequent to this Act.

§21-5E-3. Discrimination between sexes in payment of wages for work of comparable character prohibited.

[Repealed.]

§21-5E-4. Employee's right of action against employer.

[Repealed.]

§21-5E-5. Establishment of the Equal Pay Commission; appointment of members.

[Repealed.]

§21-5E-6. Commission's duties; promulgation of rules.

[Repealed.]

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 26. WATER RESOURCES PROTECTION ACT.

§22-26-5. Joint Legislative Oversight Commission on State Water Resources.

[Repealed.]

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 1B. COMMISSION ON INTERSTATE COOPERATION.

§29-1B-1. Senate committee on interstate cooperation.

[Repealed.]

§29-1B-2. House committee on interstate cooperation.

[Repealed.]

§29-1B-3. West Virginia commission on interstate cooperation.

[Repealed.]

§29-1B-4. Terms of Senate and House committees.

[Repealed.]

§29-1B-5. Function of commission.

[Repealed.]

§29-1B-6. Commission may establish delegations and committees.

[Repealed.]

§29-1B-7. Names of committees and commission.

[Repealed.]

**CHAPTER 29A. STATE ADMINISTRATIVE
PROCEDURES ACT.**

ARTICLE 3A. HIGHER EDUCATION RULE MAKING.

§29A-3A-11. Creation of a legislative oversight commission on education accountability.

(a) There is hereby created a joint commission of the Legislature known as the Legislative Oversight Commission on Education Accountability to review all legislative rules of the agency and other rules as the commission deems appropriate. The commission shall be composed of an equal number of senator and delegates, as appointed by the President of the Senate and the Speaker of the House of Delegates. Members of the commission shall receive compensation and expenses as provided in §4-2A-1 *et seq.* of this code, subject to approval of the Joint Committee on Government and Finance.

The commission may adopt rules of procedure as it considers necessary for the submission, presentation, and consideration of rules.

CHAPTER 31. CORPORATIONS.

**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND
CORRECTIONAL FACILITY AUTHORITY.**

§31-20-26. Legislative oversight committee.

[Repealed.]

CHAPTER 144

(Com. Sub. for S. B. 283 - By Senators Grady, Woelfel, Deeds, and Hamilton)

[Passed March 26, 2025; in effect 90 days from passage (June 24, 2025)]

[Approved by the Governor on April 1, 2025.]

AN ACT to amend and reenact §18-2-7c of the Code of West Virginia, 1931, as amended, relating to expanding the grade levels that the course of study in personal finance can be completed in for the purpose of counting toward satisfying the personal finance course requirement for high school graduation; and providing that the expansion of the grade levels applies retroactively.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7c. Program in personal finance.

(a) The Legislature finds and declares that persons with an understanding of personal finance are better prepared to manage their money and that providing a personal finance program in secondary schools in West Virginia will prepare students to handle their finances.

(b) To provide students a basic understanding of personal finance, the state board shall develop a program of instruction on personal finance which may be integrated into the curriculum of an appropriate existing course or courses for students in secondary schools.

(c) Beginning with the class of students entering 9th grade in the 2024-2025 school year and thereafter, each high school student

shall complete one-half credit course of study in personal finance during their 8th, 9th, 10th, 11th, or 12th grade year as a requirement for high school graduation. The expansion of the grade levels to the 8th, 9th, and 10th grade during the 2025 regular session of the Legislature applies retroactively so that a student who has taken the finance course during the 8th, 9th, or 10th grade year prior to the effective date of the expansion satisfies the personal finance course graduation requirement of this subsection. The State Board of Education shall develop and issue implementation guidance to local school boards and other education agencies as to curriculum, content matter standards, eligible teacher certification(s), and graduation requirements the course may fulfill before July 1, 2024.

(d) Every student shall complete a course in personal finance prior to high school graduation.



CHAPTER 145

(Com. Sub. for S. B. 825 - By Senators Jeffries and Woelfel)

[Passed April 12, 2025; in effect from passage]

[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §18B-12-1 and §18B-12-2 of the Code of West Virginia, 1931, as amended; and to amend the code by adding a new section, designated §18B-12-11, relating to permitting higher education institutions to enter into agreements with certain nonprofit organizations; defining terms; clarifying legislative findings and purpose to facilitate economic development and foster and enhance the operational success and competitive nature of intercollegiate athletics; permitting agreements for purposes of economic development and job creation; and establishing powers to govern the business relationship of any state higher education institution and nonprofit corporation contracting for such economic development purposes.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 12. RESEARCH AND DEVELOPMENT,
ECONOMIC DEVELOPMENT, AND ATHLETICS
AGREEMENTS FOR STATE INSTITUTIONS OF
HIGHER EDUCATION.**

§18B-12-1. Definitions.

The following words used in this article shall, unless the context clearly indicates a different meaning, be construed as follows:

(1) "Agreement" means any agreement being entered into between a governing board and a corporation pursuant to §18B-12-4 or §18B-12-11 of this code.

(2) "Corporation" means a nonstock, not-for-profit corporation established under the general corporation laws of the state which meets the description presented by §18B-12-3 or §18B-12-11 of this code.

(3) "Corporate directors" means the board of directors of a corporation.

***§18B-12-2. Legislative findings and purpose.**

(a) The Legislature finds and determines that the future economic development in the state will depend in part upon research developed at the state institutions of higher education, and enhanced research opportunities for state institutions of higher education will promote the general economic welfare of the citizens of the state. In order to enhance the competitive position of state institutions of higher education in the current environment for research and development, expenditures for equipment and material for research projects must be handled in an expeditious fashion, and the acquisition and utilization of research grants can be simplified and expedited through the utilization of private corporations.

(b) The interest of the citizens of the state will be best met by agreements entered into and carried out by the governing boards and corporations to provide research assistance for state institutions of higher education. Therefore, in order to facilitate research and development grants, economic development, and opportunities for state institutions of higher education, it is appropriate to authorize the governing boards to contract with private corporations organized for the purpose of providing such services to state institutions of higher education or established exclusively for purposes of economic development and job creation.

***NOTE:** This section was also amended by S. B. 825 (Chapter 145), which passed prior to this Act.

(c) The Legislature further finds and determines that in order to foster and enhance the operational success and competitive nature of intercollegiate athletics in the current environment, the state institutions of higher education will benefit from utilization of private corporations to conduct operational, economic, fiscal, and educational development activities and services related to intercollegiate athletics' programs.

§18B-12-11. Agreements with corporations solely for economic development.

(a) Notwithstanding any other provision of this article to the contrary, any state institution of higher education may enter into an agreement with a nonstock, not-for-profit corporation which qualifies as an exempt organization under section 501(c) of the Internal Revenue Code of 1986, as amended, established under corporation laws of the state exclusively for purposes of economic development and job creation.

(b) Each governing board for a state institution of higher education may enter into agreements and any other contractual relationships with one or more corporations described in subsection (a) of this section under such terms as are mutually agreed upon to foster future economic development in the state. For purposes of this section:

(1) The president and the president's appointees from the institution may, but are not required to, serve as the corporation's voting corporate directors;

(2) The meetings of the corporate directors are exempt from the provisions of §6-9A-3 of this code;

(3) The assets of the corporation are not subject to the provisions of §18B-12-3 of this code;

(4) The corporation and agreements between the corporation and the state institution of higher education are not subject to the provisions of §18B-12-4 of this code; and

(5) The corporation may be designated as the economic development entity for the state institution of higher education.



CHAPTER 146

(H. B. 2773 - By Delegates Ellington, Willis, Dittman, Jennings, Pritt, Hornby, Toney, Statler, Crouse, T. Clark, and Mallow)

[Passed April 10, 2025; in effect from passage]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend and react §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing legislative rules regarding higher education; authorizing legislative rules for the Higher Education Policy Commission regarding Accountability System and Underwood-Smith Teaching Scholars and Teacher Loan Repayment Program; and authorizing legislative rules for the Community and Technical College Education regarding Employing and Evaluating Presidents.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-2. Authorizing rules of Higher Education Policy Commission.

(a) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program rule), is authorized.

(b) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (West Virginia Engineering, Science, and Technology Scholarship Program rule), is authorized.

(c) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (Medical Education Fee and Medical Student Loan Program rule), is authorized.

(d) The legislative rule filed in the State Register on October 27, 2005, relating to the Higher Education Policy Commission (authorization of degree-granting institutions), is authorized.

(e) The legislative rule filed in the State Register on August 23, 2006, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program), is authorized.

(f) The legislative rule filed in the State Register on January 4, 2008, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE), is authorized.

(g) The legislative rule filed in the State Register on August 25, 2008, relating to the Higher Education Policy Commission (Research Trust Program), is authorized.

(h) The legislative rule filed in the State Register on January 8, 2009, relating to the Higher Education Policy Commission (Guidelines for Governing Boards in Employing and Evaluating Presidents), is authorized.

(i) The legislative rule filed in the State Register on September 10, 2008, relating to the Higher Education Policy Commission (Medical Student Loan Program), is authorized, with the following amendment:

On page two, subsection 5.1., following the words "financial aid office" by inserting a new subdivision 5.1.3., to read as follows: "United States citizenship or legal immigrant status while actively pursuing United States citizenship".

(j) The legislative rule filed in the State Register on December 1, 2008, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program), is authorized.

(k) The legislative rule filed in the State Register on January 26, 2009, relating to the Higher Education Policy Commission (Accountability System), is authorized.

(l) The legislative rule filed in the State Register on May 20, 2009, relating to the Higher Education Policy Commission (Energy and Water Savings Revolving Loan Fund Program), is authorized.

(m) The legislative rule filed in the State Register on January 27, 2010, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE), is authorized.

(n) The legislative rule filed in the State Register on December 8, 2010, relating to the Higher Education Policy Commission (authorization of degree-granting institutions), is authorized, with the following amendment:

On page 28, subsection 9.1.b., following the words "Good cause shall consist of" by inserting the words "any one or more of the following".

(o) The legislative rule filed in the State Register on December 12, 2011, relating to the Higher Education Policy Commission (Tuition and Fee Policy), is authorized.

(p) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher Education Policy Commission (authorization of degree-granting institutions), is authorized.

(q) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher Education Policy Commission (annual reauthorization of degree-granting institutions), is authorized.

(r) The legislative rule filed in the State Register on March 20, 2013, relating to the Higher Education Policy Commission (Human Resources Administration), is authorized.

(s) The legislative rule filed in the State Register on January 24, 2014, relating to the Higher Education Policy Commission (Capital Project Management), is authorized.

(t) The legislative rule filed in the State Register on April 4, 2014, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program), is authorized.

(u) The legislative rule filed in the State Register on August 4, 2014, relating to the Higher Education Policy Commission (Nursing Scholarship Program), is authorized.

(v) The legislative rule filed in the State Register on October 28, 2015, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program), is authorized.

(w) The legislative rule filed in the State Register on October 28, 2015, relating to the Higher Education Policy Commission (Nursing Scholarship Program), is authorized.

(x) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program), is authorized.

(y) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE), is authorized.

(z) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (Research Trust Fund Program), is authorized.

(aa) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (annual reauthorization of degree-granting institutions), is authorized.

(bb) The legislative rule filed in the State Register on January 16, 2018, relating to the Higher Education Policy Commission (Tuition and Fee Policy), is authorized.

(cc) The legislative rule filed in the State Register on January 16, 2018, relating to the Higher Education Policy Commission (Human Resources Administration), is authorized.

(dd) The legislative rule filed in the State Register on January 22, 2018, relating to the Higher Education Policy Commission (Capital Project Management), is authorized, with the following amendments:

On page one, subsection 2.1., by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new subdivision 2.1.d., to read as follows: "Efficient use of existing classroom and other space by institutions, while maintaining an appropriate deference to the value judgments of the institutional governing boards.";

On page seven, subsection 4.2., by striking out all of subdivision 4.2.d.5. and inserting in lieu thereof a new subdivision 4.2.d.5., to read as follows: "Funding will be prioritized for each institution in accordance with institutional plans confirmed by the Commission or approved by the Council.";

On page seven, subsection 4.2., by striking out all of subdivision 4.2.d.6. and inserting in lieu thereof a new subdivision 4.2.d.6., to read as follows: "Facility utilization rates will be an important factor in prioritizing capital projects across the systems.";

On page seven, subsection 4.2., by striking out all of subdivision 4.2.d.7. and inserting in lieu thereof a new subdivision 4.2.d.7., to read as follows: "Institutions with overall net asset values and capacity utilization rates that exceed or equal thresholds set annually by the Commission and Council are the presumptive priority for new facilities. If these projects do not replace an existing facility, they would be included in the Program Improvement category."; and

On pages 10-11, section 5, by striking out all of subdivision 5.6. and inserting in lieu thereof a new subdivision 5.6., to read as follows: "A governing board may not implement a campus development plan or plan update that has not been confirmed by the Commission or approved by the Council, as appropriate. The purchase of any property for the construction of a facility that is not included in the campus development plan creates an update to the campus development plan that must be confirmed by the

Commission or approved by the Council, as appropriate, prior to its purchase. In the case of institutions governed by the Council, this provision applies equally to property acquired by any means, whether by purchase or otherwise."

(ee) The legislative rule filed in the State Register on January 22, 2019, relating to the Higher Education Policy Commission (Acceptance of Advanced Placement Credit), is repealed.

(ff) The legislative rule filed in the State Register on January 22, 2019, relating to the Higher Education Policy Commission (Human Resources Administration), is repealed.

(gg) The legislative rule filed in the State Register on August 28, 2018, relating to the Higher Education Policy Commission (Guidelines for Governing Boards in Employing and Evaluating Presidents), is authorized.

(hh) The legislative rule filed in the State Register on August 7, 2018, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence (PROMISE) Scholarship Program), is authorized, with the following amendments:

On page one, subsection 2.1., by striking out all of subdivision 2.1.a. and inserting in lieu thereof a new subdivision 2.1.a., to read as follows: "Must complete high school graduation requirements at a West Virginia public, private or home school unless he or she qualified as a military dependent under Section 5 of this rule, or has commuted to an out-of-state school pursuant to Section 6 of this rule; and";

On page one, subsection 2.1., by striking out all of subdivision 2.1.b. and inserting in lieu thereof a new subdivision 2.1.b., to read as follows: "Must complete at least one half of the credits required for high school graduation through attendance at a public, private or home school in this state, unless he or she qualified as a military dependent under Section 5 of this rule, or has commuted to an out-of-state school pursuant to Section 6 of this rule; and";

On page one, subdivision 2.1.c., by striking out the words "Section 5" and inserting in lieu thereof the words "Section 4";

On page one, subsection 2.1., by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new subdivision 2.1.d., to read as follows: "Must have attained a cumulative grade point average of at least 3.0 on a 4.0 scale, based on county board grading policies, in both core courses and overall coursework required for graduation by the State Board of Education, while enrolled in a public or private high school. If home-schooled pursuant to the exemption allowed by W.Va. Code §18-8-1 as documented by the county school board system, the applicant must have completed in both the 11th and 12th grades the required core and elective coursework necessary to prepare students for success in postsecondary education at the associate and baccalaureate levels by attaining a cumulative grade point average of at least 3.0 on a 4.0 grading scale in both core courses and overall coursework as determined by the Commission; and";

On page one, subsection 2.1., subdivision 2.1.f., preceding the words "have resided in West Virginia", by striking out the word "Must" and inserting in lieu thereof the words "The applicant and his or her parent or legal guardian must" ;

On page one, subdivision 2.1.f., by striking out the words "Section 5" and inserting in lieu thereof the words "Section 4";

On page one, subdivision 2.1.f., by striking out the words "Section 6" and inserting in lieu thereof the words "Section 5";

On page two, subsection 2.4., by striking out the words "Section 10.7 or 10.8" and inserting in lieu thereof the words "Section 9.7 or 9.8";

On page two, subsection 2.5., by striking out the words "Section 8" and inserting in lieu thereof the words "Section 7";

On page two, subsection 2.5., by striking out the words "Section 10" and inserting in lieu thereof the words "Section 9";

On page two, by striking out all of section 3 and renumbering the remaining sections accordingly;

On page three, subsection 4.4., by striking out the words "Section 14" and inserting in lieu thereof the words "Section 13";

On page five-six, subsection 10.6., by striking out the words "Section 10.3" and inserting in lieu thereof the words "Section 9.3";

On page six, subsection 10.6., by striking out the words "Section 10.2" and inserting in lieu thereof the words "Section 9.2";

On page six, subsection 10.9.c., by striking out the words "Section 5" and inserting in lieu thereof the words "Section 4"; and

On page eight, subsection 15.1.b., by striking out the words "Section 11.1" and inserting in lieu thereof the words "Section 10.1".

(ii) The legislative rule filed in the State Register on September 30, 2019, relating to the Higher Education Policy Commission (Higher Education Accountability System) is authorized.

(jj) The legislative rule filed in the State Register on November 5, 2019, relating to the Higher Education Policy Commission (Underwood-Smith Teaching Scholars Program and Teacher Education Loan Repayment Program) is authorized.

(kk) The legislative rule filed in the State Register on October 4, 2019, relating to the Higher Education Policy Commission (Accountability System) is repealed.

(ll) The legislative rule filed in the State Register on July 29, 2020, relating to the Higher Education Policy Commission (Mental Health Loan Repayment Program) is authorized, with the following amendments:

On page one, subdivision 3.1.b., after the words "family therapist," by inserting the words "psychiatric mental health nurse practitioner,";

On page two, subsection 6.1., by striking out the words "at least" and inserting in lieu thereof the words "up to"; and

On page three, subsection 9.1., after the words "family therapists" by inserting the words "psychiatric mental health nurse practitioners,".

(mm) The legislative rule filed in the State Register on March 11, 2021, relating to the Higher Education Policy Commission (Administrative Exemption) is authorized.

(nn) The legislative rule filed in the State Register on May 5, 2021, relating to the Higher Education Policy Commission (Research Trust Fund Program) is authorized.

(oo) The legislative rule filed in the State Register on May 5, 2021, relating to the Higher Education Policy Commission (Annual Reauthorization of Degree-Granting Institutions) is authorized.

(pp) The legislative rule filed in the State Register on July 29, 2022, relating to the Higher Education Policy Commission (Performance-Based Funding Formula) is authorized.

(qq) The legislative rule filed in the State Register on June 14, 2022, relating to the Higher Education Policy Commission (Capital Project Management) is authorized.

(rr) The legislative rule filed in the State Register on July 29, 2022, relating to the Higher Education Policy Commission (Tuition and Fee Policy) is authorized.

(ss) The legislative rule filed in the State Register on June 14, 2022, relating to the Higher Education Policy Commission (Higher Education Grant Program) is authorized.

(tt) The legislative rule filed in the State Register on July 29, 2022, relating to the Higher Education Policy Commission (Annual Reauthorization of Degree-Granting Institutions) is authorized.

(uu) The legislative rule filed in the State Register on June 14, 2022, relating to the Higher Education Policy Commission (Human Resources Administration) is authorized.

(vv) The legislative rule filed in the State Register on July 25, 2023, relating to the Higher Education Policy Commission (Guidelines for Employing and Evaluating Presidents) is authorized.

(ww) The legislative rule filed in the State Register on September 12, 2023, relating to the Higher Education Policy Commission (Higher Education Adult Part-Time Student (HEAPS) Grant Program).

(xx) The legislative rule filed in the State Register on July 26, 2023, relating to the Higher Education Policy Commission (West Virginia Providing Real Opportunities for Maximizing In-State Student Excellence (PROMISE) Scholarship Program) is authorized.

(yy) The legislative rule filed in the State Register on July 28, 2023, relating to the Higher Education Policy Commission (Dual Enrollment Pilot Program) is authorized.

(zz) The legislative rule filed in the State Register on July 24, 2023, relating to the Higher Education Policy Commission (West Virginia Science, Technology, Engineering, and Math (STEM) Scholarship Program) is authorized.

(aaa) The legislative rule filed in the State Register on July 24, 2023, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program) is authorized.

(bbb) The legislative rule filed in the State Register on July 24, 2023, relating to the Higher Education Policy Commission (Nursing Scholarship Program) is authorized.

(ccc) The legislative rule filed in the State Register on July 19, 2024, relating to the Higher Education Policy Commission (Accountability System) is authorized.

(ddd) The legislative rule filed in the State Register on July 19, 2024, relating to the Higher Education Policy Commission (Underwood-Smith Teaching Scholars and Teacher Education Loan Repayment Program) is authorized.

§18B-17-3. Authorizing rules of the Council for Community and Technical College Education.

(a) The legislative rule filed in the State Register on September 29, 2004, relating to the West Virginia Council for Community and Technical College Education (performance indicators), is authorized.

(b) The legislative rule filed in the State Register on October 13, 2005, relating to the West Virginia Council for Community and Technical College Education (authorization of degree-granting institutions), is authorized.

(c) The legislative rule filed in the State Register on October 30, 2006, relating to the West Virginia Council for Community and Technical College Education (Workforce Development Initiative Program), is authorized.

(d) The legislative rule filed in the State Register on December 4, 2008, relating to the West Virginia Council for Community and Technical College Education (Employing and Evaluating Presidents), is authorized.

(e) The legislative rule filed in the State Register on December 23, 2008, relating to the West Virginia Council for Community and Technical College Education (performance indicators), is authorized.

(f) The legislative rule filed in the State Register on February 5, 2009, relating to the West Virginia Council for Community and Technical College Education (finance), is authorized.

(g) The legislative rule filed in the State Register on February 5, 2009, relating to the West Virginia Council for Community and Technical College Education (Accountability System), is authorized.

(h) The legislative rule filed in the State Register on June 15, 2011, relating to the West Virginia Council for Community and Technical College Education (Workforce Development Initiative Program), is authorized.

(i) The legislative rule filed in the State Register on October 26, 2011, relating to the West Virginia Council for Community and Technical College Education (Tuition and Fees), is authorized.

(j) The legislative rule filed in the State Register on October 17, 2012, relating to the West Virginia Council for Community and Technical College Education (authorization of degree-granting institutions), is authorized.

(k) The legislative rule filed in the State Register on October 17, 2012, relating to the West Virginia Council for Community and Technical College Education (annual reauthorization of degree-granting institutions), is authorized.

(l) The legislative rule filed in the State Register on March 21, 2013, relating to the West Virginia Council for Community and Technical College Education (Human Resources Administration), is authorized.

(m) The legislative rule filed in the State Register on August 21, 2012, relating to the West Virginia Council for Community and Technical College Education (West Virginia EDGE Program), is authorized.

(n) The legislative rule filed in the State Register on January 28, 2014, relating to the West Virginia Council for Community and Technical College Education (Capital Project Management), is authorized.

(o) The legislative rule filed in the State Register on January 18, 2017, relating to the West Virginia Council for Community and Technical College Education (annual reauthorization of degree-granting institutions), is authorized.

(p) The legislative rule filed in the State Register on January 18, 2017, relating to the West Virginia Council for Community and

Technical College Education (Business, Occupational, and Trade Schools), is authorized.

(q) The legislative rule filed in the State Register on January 26, 2018, relating to the West Virginia Council for Community and Technical College Education (Human Resources Administration), is authorized.

(r) The legislative rule filed in the State Register on January 26, 2018, relating to the West Virginia Council for Community and Technical College Education (Capital Project Management), is authorized, with the following amendments:

On page one, subsection 2.1., by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new subdivision 2.1.d., to read as follows: "Efficient use of existing classroom and other space by institutions, while maintaining an appropriate deference to the value judgments of the institutional governing boards.";

On page seven, subsection 4.2., by striking out all of subdivision 4.2.d.5. and inserting in lieu thereof a new subdivision 4.2.d.5., to read as follows: "Funding will be prioritized for each institution in accordance with institutional plans confirmed by the Commission or approved by the Council.";

On page seven, subsection 4.2., by striking out all of subdivision 4.2.d.6. and inserting in lieu thereof a new subdivision 4.2.d.6., to read as follows: "Facility utilization rates will be an important factor in prioritizing capital projects across the systems.";

On page seven, subsection 4.2., by striking out all of subdivision 4.2.d.7. and inserting in lieu thereof a new subdivision 4.2.d.7., to read as follows: "Institutions with overall net asset values and capacity utilization rates that exceed or equal thresholds set annually by the Commission and Council are the presumptive priority for new facilities. If these projects do not replace an existing facility, they would be included in the Program Improvement category."; and

On pages 10-11, section 5, by striking out all of subdivision 5.6. and inserting in lieu thereof a new subdivision 5.6., to read as follows: "A governing board may not implement a campus development plan or plan update that has not been confirmed by the Commission or approved by the Council, as appropriate. The purchase of any property for the construction of a facility that is not included in the campus development plan creates an update to the campus development plan that must be confirmed by the Commission or approved by the Council, as appropriate, prior to its purchase. In the case of institutions governed by the Council, this provision applies equally to property acquired by any means, whether by purchase or otherwise.".

(s) The legislative rule filed in the State Register on July 2, 2018, relating to the West Virginia Council for Community and Technical College Education (Tuition and Fees), is authorized.

(t) The legislative rule filed in the State Register on September 26, 2018, relating to the West Virginia Council for Community and Technical College Education (Acceptance of Advanced Placement Credit), is repealed.

(u) The legislative rule filed in the State Register on November 20, 2018, relating to the West Virginia Council for Community and Technical College Education (initial authorization of degree-granting institutions), is authorized.

(v) The legislative rule filed in the State Register on November 20, 2018, relating to the West Virginia Council for Community and Technical College Education (Workforce Development: Learn and Earn, Technical Program Development, and West Virginia Advance Rapid Response Grants), is authorized.

(w) The legislative rule filed in the State Register on January 25, 2019, relating to the West Virginia Council for Community and Technical College Education (Human Resources Administration), is repealed.

(x) The legislative rule filed in the State Register on June 3, 2019, relating to the West Virginia Council for Community and

Technical College Education (West Virginia Invests Grant Program) is authorized.

(y) The legislative rule filed in the State Register on April 27, 2021 (Business, Occupational, and Trade Schools) is authorized.

(z) The legislative rule filed in the State Register on April 27, 2021 (Annual Reauthorization of Degree-Granting Institutions) is authorized.

(aa) The legislative rule filed in the State Register on November 10, 2021 (West Virginia Invests Grant Program) is authorized.

(bb) The legislative rule filed in the State Register on July 22, 2022 (Performance-Based Funding Formula) is authorized.

(cc) The legislative rule filed in the State Register on June 13, 2022 (Capital Project Management) is authorized.

(dd) The legislative rule filed in the State Register on July 21, 2022 (Workforce Development Initiative Grant Programs) is authorized.

(ee) The legislative rule filed in the State Register on July 21, 2022 (Annual Reauthorization of Degree-Granting Institutions) is authorized, with the following amendment:

On page 13 by adding a new subsection designated 12.23 to read as follows: "Nothing in this rule in any way affects or limits the due process protections or other protections afforded to proprietary schools under either W. Va. Code § 18B-2B-9 or 135 C.S.R. 35, Business, Occupational, and Trade Schools."

(ff) The legislative rule filed in the State Register on June 13, 2022 (Human Resources Administration) is authorized.

(gg) The legislative rule filed in the State Register on July 26, 2023, relating to the Council for Community and Technical College Education (Higher Education Accountability System) is authorized.

(hh) The legislative rule filed in the State Register on September 14, 2023, relating to the Council for Community and Technical College Education (Dual Enrollment Pilot Program) is authorized.

(ii) The legislative rule filed in the State Register on July 26, 2023, relating to the Council for Community and Technical College Education (Initial Authorization of Degree-Granting Institutions) is authorized.

(jj) The legislative rule filed in the State Register on July 26, 2023, relating to the Council for Community and Technical College Education (Tuition and Fees) is authorized.

(kk) The legislative rule filed in the State Register on July 26, 2023, relating to the Council for Community and Technical College Education (Accountability System) is repealed.

(ll) The legislative rule filed in the State Register on July 25, 2024, relating to the Council for Community and Technical College Education (Employing and Evaluating Presidents) is authorized.



CHAPTER 147

(Com. Sub. for H. B. 3024 - By Delegates Ellington, Statler, Toney, T. Clark, Willis, Mallow, Hornby, Ward, Barnhart, Stephens, and Shamblin)

[Passed April 10, 2025; in effect 90 days from passage (July 9, 2025)]
[Approved by the Governor on April 30, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding a new section, designated §18B-14-5, relating to the guaranteed transfer of credit for courses completed in career pathways between high schools, career and technical education centers, community and technical colleges, and baccalaureate institutions; imposing duties on the Higher Education Policy Commission and the Council for Community and Technical College Education; establishing a statewide guaranteed transfer and articulation advisory committee; setting forth membership of the advisory committee; allowing for subcommittees; requiring the commission and the council to oversee the development of a statewide articulation and guaranteed transfer agreement and setting forth parameters therefore; requiring the commission and the council, in collaboration with the advisory committee, to develop, coordinate, and maintain guaranteed degree transfer pathways for selected baccalaureate programs and the parameters therefore; setting forth additional requirements for guaranteed statewide transfer pathways; and requiring the commission and council to propose rules for legislative approval.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. MISCELLANEOUS.

***§18B-14-5. Guaranteed transfer of credit for courses completed in career pathways between high schools, career and technical education centers, community and technical colleges and baccalaureate institutions.**

(a) The Legislature finds that:

(1) The state has an increasing need for individuals with a postsecondary credential or degree;

(2) Over 40 percent of bachelor's degree completers nationally attended more than one postsecondary institution, making student transfer a critical priority; and

(3) Implementing a seamless education system with uniform guaranteed transfer of credits among post-secondary institutions in the state would greatly benefit students by reducing costs and increasing degree completion rates.

(b) The commission and council jointly shall:

(1) Oversee the development, implementation, and maintenance of guaranteed statewide transfer pathways as provided herein;

(2) Develop statewide guaranteed transfer frameworks and agreements to govern the granting and transfer of credit awarded through completion of courses and through competency-based and prior learning assessments; and

(3) Establish an appeals process to resolve disagreements between transferring students and receiving institutions of higher education regarding the transfer and acceptance of credits earned at or awarded by another institution.

(c) To effectuate the purposes of this section, the chancellors or their respective designees shall establish a statewide guaranteed transfer and articulation advisory committee, referred to in this section as the "advisory committee," and any necessary subcommittees. The advisory committee shall report to the chancellors or their respective designees, who may present its

***NOTE:** This section was also amended by H. B. 3024 (Chapter 147), which passed subsequent to this Act.

recommendations and decisions to the commission and the council for approval.

(1) The advisory committee shall consist of at least one representative from each of the state institutions of higher education as recommended by the institutional presidents and deemed appropriate and necessary by the chancellors or their respective designees. The chancellors or their respective designees shall appoint a chair or co-chairs from among the membership.

(2) Subcommittees may be formed on an ad hoc basis as deemed necessary by the chancellors or their respective designees to address specific topics or tasks related to guaranteed transfer and articulation.

(d) The commission and the council shall oversee the development of a statewide articulation and guaranteed transfer agreement, which shall, at a minimum:

(1) Guarantee the transfer of general education courses and common degree program prerequisites between and among public institutions;

(2) Guarantee the transfer of all courses contained in a transfer pathway as established in this section as credit in courses that satisfy general education or other specific program requirements;

(3) Guarantee that every graduate of a community and technical college awarded an associate degree that has been approved by the commission or the council for transfer to a public baccalaureate institution shall be deemed to have met all general education requirements and shall be granted admission to the upper division of any program offered by such public baccalaureate institution, unless a specific program has limited capacity or has audition or other specialized admissions requirements that are approved by the commission or council;

(4) Provide that graduates awarded an associate degree approved by the commission or council for guaranteed transfer and who transfer to a public baccalaureate institution shall not be

required to take any additional general education courses to fulfill baccalaureate degree requirements;

(5) Provide that graduates awarded an associate degree approved by the commission or council for guaranteed transfer shall be automatically admitted to any public baccalaureate institution and given priority for enrollment over out-of-state students;

(6) Guarantee the statewide articulation of appropriate career and technical education programs, workforce development programs, and transfer of earned college-level course credits between secondary schools and community and technical colleges;

(7) Provide for acceptance by institutions of higher education of credits earned in accelerated programs such as dual enrollment and the Advanced Placement, International Baccalaureate, and College-Level Examination programs; and

(8) Provide for consistent acceptance by the public institutions of higher education of credits earned through competency-based education and prior learning assessments.

(e) The commission and the council, in collaboration with the advisory committee, shall develop, coordinate, and maintain guaranteed degree transfer pathways for selected baccalaureate programs, including those that are in demand across the state or prepare graduates for careers in industries such as nursing and hospitality/tourism, which programs shall be defined and identified by the commission and the council in consultation with the advisory committee. At a minimum, the guaranteed transfer pathways shall:

(1) Consist of 60 hours of instruction resulting in an associate degree that can be transferred and applied in full toward the requirements for a baccalaureate degree at a public baccalaureate institution;

(2) Include dual enrollment courses completed in high school or at a career and technical education center that are part of an approved guaranteed transfer pathway. The chancellors or their

designees shall ensure these courses are recognized for college credit upon successful completion and shall apply to the student's approved program of study if the courses align with the student's chosen college major;

(3) Fulfill all general education requirements and any other lower-division requirements for graduation within the program offered at any public baccalaureate institution; and

(4) Include relevant industry credentials or other microcredentials that prepare students for specific jobs within selected in-demand and growing industries and that move individuals along a career pathway or up a career ladder, and which can be combined to meet the requirements of one or more related bachelor's degree programs.

(f) A student who completes all of the requirements of a specific guaranteed transfer pathway, including approved dual enrollment courses completed during high school or at a career and technical education center, and who transfers to an associated program at a public baccalaureate institution shall not be required to complete more than the total credits required for the baccalaureate degree, less the 60 hours of credit earned in the guaranteed transfer pathway.

(g) The guaranteed transfer pathways approved by the commission and council shall be mandatory for all public institutions to accept and shall be recognized universally as guaranteed statewide transfer pathways. All courses included in the approved transfer pathways shall be accepted as meeting general education or program-specific requirements at the receiving institution. The commission and council may, upon the recommendation of the chancellors, approve exceptions to this requirement in cases where such arrangements would present a hardship to the institution, cause the institution to be in violation of standards established by regional or program-specific accrediting bodies, or for other good cause shown.

(h) The commission and council shall propose rules for legislative approval in accordance with the provisions of §18B-1-6 and §29A-3A-1 *et seq.* of this code to implement the provisions of this section.

CHAPTER 148

**(Com. Sub. for H. B. 3192 - By Delegates Ellington, Statler,
and Toney)**

Passed March 31, 2025; in effect 90 days from passage (June 29, 2025)]
[Approved by the Governor on April 8, 2025.]

AN ACT to repeal §18-11-1, §18-11-1a, §18-11-1b, §18-11-2, §18-11-3, §18-11-4, §18-11-4a, §18-11-4d, §18-11-5, §18-11-5b, §18-11-5d, §18-11-6, §18-11-7, §18-11-8, §18-11-8a, §18-11-9, §18-11-9a, §18-11-10, §18-11-10a, §18-11-11, §18-11-19, §18-11-20, §18-11-21, §18-11-22, §18-11-23, §18-11-24, §18-11-25, §18-12-1, §18-19-1, §18-19-2, §18-19-3, §18-19-4, §18-22C-1, §18-22C-2, §18-22D-1, §18-22D-2, §18-22D-3, §18-22D-4, §18-22D-5, §18-22D-6, §18-22D-7, §18-22D-8, §18-22D-9, §18-23-6, §18-23-7, §18-23-9, §18-23-10, §18-23-16, §18-23-17, §18-23-19, §18B-1-8, §18B-1-11, §18B-1A-4, §18B-1A-5, §18B-1A-6, §18B-1C-1, §18B-1D-6, §18B-1F-10, §18B-2-6, §18B-2-8, §18B-2A-5, §18B-2A-7, §18B-2A-7a, §18B-2B-1, §18B-3-4, §18B-3B-1, §18B-3B-2, §18B-3B-3, §18B-3C-5, §18B-3C-7, §18B-3C-7a, §18B-3C-10, §18B-3C-11, §18B-3C-12, §18B-3C-13, §18B-3C-15, §18B-3C-16, §18B-3E-1, §18B-3E-2, §18B-3F-1, §18B-3F-2, §18B-3F-3, §18B-3F-4, §18B-3F-5, §18B-3F-6, §18B-3F-7, §18B-3F-8, §18B-3F-9, §18B-3F-10, §18B-4-2a, §18B-7-16, §18B-9A-5, §18B-9A-5a, §18B-11-1, §18B-11-3, §18B-14-1, §18B-14-2, §18B-14-9, §18B-17-4, §18B-17-5, and §18B-17-6, of the Code of West Virginia, 1931, as amended; relating to repeal of antiquated, inoperative, conflicting and duplicative provisions of code.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.**ARTICLE 11. WEST VIRGINIA UNIVERSITY.****§1 Repeal of sections regarding West Virginia University.**

That §18-11-1, §18-11-1a, §18-11-1b, §18-11-2, §18-11-3, §18-11-4, §18-11-4a, §18-11-4d, §18-11-5, §18-11-5b, §18-11-5d, §18-11-6, §18-11-7, §18-11-8, §18-11-8a, §18-11-9, §18-11-9a, §18-11-10, §18-11-10a, §18-11-11, §18-11-19, §18-11-20, §18-11-21, §18-11-22, §18-11-23, §18-11-24, and §18-11-25 of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 12. STATE TEACHERS' COLLEGES.**§1 Repeal of article regarding State Teachers' Colleges.**

That §18-12-1 of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 19. EDUCATIONAL OPPORTUNITIES FOR CHILDREN AND SPOUSES OF DECEASED SOLDIERS, SAILORS, MARINES AND AIRMEN.**§1 Repeal of article regarding Educational Opportunities for Children and Spouses of Deceased Soldiers, Sailors, Marines and Airmen.**

That §18-19-1, §18-19-2, §18-19-3, and §18-19-4 of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 22C. STATE AID FOR STUDENTS ATTENDING GREENBRIER COLLEGE OF OSTEOPATHIC MEDICINE.**§1 Repeal of article regarding State Aid for Students Attending Greenbrier College of Osteopathic Medicine.**

That §18-22C-1 and §18-22C-2 of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 22D. HIGHER EDUCATION STUDENT ASSISTANCE LOAN PROGRAM.**§1 Repeal of article regarding Higher Education Student Assistance Loan Program.**

That §18-22D-1, §18-22D-2, §18-22D-3, §18-22D-4, §18-22D-5, §18-22D-6, §18-22D-7, §18-22D-8, and §18-22D-9 of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES OF GOVERNING BOARDS OF STATE INSTITUTIONS OF HIGHER EDUCATION.**§1 Repeal of sections relating to bonds, appropriations, accounts, and record keeping.**

That §18-23-6, §18-23-7, §18-23-9, §18-23-10, §18-23-16, §18-23-17 and §18-23-19 of the Code of West Virginia, 1931, as amended, are repealed.

CHAPTER 18B. HIGHER EDUCATION.**ARTICLE 1. GOVERNANCE.****§1 Repeal of sections relating to certain governance provisions.**

That §18b-1-8 and §18b-1-11 of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE FUTURE OF WEST VIRGINIA.**§1 Repealing article creating Compact with Higher Education for the Future of West Virginia.**

That §18B-1A-4, §18B-1A-5, and §18B-1A-6 of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 1C. WEST VIRGINIA UNIVERSITY INSTITUTE OF TECHNOLOGY.

§1 Repeal of section regarding to legislative findings and intent.

That §18B-1C-1 of the Code of West Virginia, 1931, as amended, is repealed.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.**§1 Repeal of section relating to state compacts.**

That §18B-1D-6 of the Code of West Virginia, 1931, as amended, is repealed.

ARTICLE 1F. MANAGEMENT AGREEMENTS FOR THE HIGHER EDUCATION POLICY COMMISSION.**§1 Repeal of section requiring study and report by the Department of Commerce.**

That §18B-1F-10 of the Code of West Virginia, 1931, as amended, is repealed.

ARTICLE 2. UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES.**§1 Repealing article relating to University of West Virginia Board of Trustees.**

That §18B-2-6 and §18B-2-8 of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 2A. INSTITUTIONAL BOARD OF GOVERNORS.**§1 Repeal of sections regarding public school service program, university status and transfer of operations.**

That §18B-2A-5, §18B-2A-7 and §18B-2A-7a of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION.

§1 Repeal of section regarding legislative findings, intent and purpose.

That §18B-2B-1 of the Code of West Virginia, 1931, as amended, is repealed.

ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF GOVERNING BOARDS.

§1 Repeal of section duty of governing boards to address state priorities.

That §18B-3-4 of the Code of West Virginia, 1931, as amended, is repealed.

ARTICLE 3B. COLLABORATIVE DEGREE COMPLETION PROGRAM.

§1 Repeal of article creating Collaborative Degree Completion Program.

That §18B-3B-1, §18B-3B-2, and §18B-3B-3 of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§1 Repeal of sections regarding separation from former sponsoring four year institution and collaboration with federal apprenticeship programs.

That §18B-3C-5, §18B-3C-7, §18B-3C-7a, §18B-3C-10, §18B-3C-11, §18B-3C-12, §18B-3C-13, §18B-3C-15, and §18B-3C-16 of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 3E. EASTERN WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE.

§1 Repeal of article regarding Eastern West Virginia Community and Technical College.

That §18B-3E-1 and §18B-3E-2 of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 3F. REORGANIZATION OF COMMUNITY AND TECHNICAL COLLEGES.

§1 Repeal of article setting forth Reorganization of Community and Technical Colleges.

That §18B-3F-1, §18B-3F-2, §18B-3F-3, §18B-3F-4, §18B-3F-5, §18B-3F-6, §18B-3F-7, §18B-3F-8, §18B-3F-9, and §18B-3F-10 of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 4. GENERAL ADMINISTRATION.

§1 Repeal of section regarding development of benefit programs .

That §18B-4-2a of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 7. PERSONNEL GENERALLY.

§1 Repeal of section regarding study of employment practices.

That §18B-7-16 of the Code of West Virginia, 1931, as amended, is repealed.

ARTICLE 9A. CLASSIFICATION AND COMPENSATION SYSTEM.

§1 Repeal of sections establishing compensation planning and review committee and restricting duties thereof.

That §18B-9A-5 and §18B-9A-5a of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.

§1 Repeal of sections creating center for regional progress and institute for international trade development.

That §18B-11-1 and §18B-11-3 of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 14. MISCELLANEOUS.

§1 Repeal of sections requiring certain studies and reports thereon.

That *§18B-14-1, §18B-14-2, and *§18B-14-9 of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 17. LEGISLATIVE RULES.

§1 Repeal of sections authorizing specific rules.

That §18B-17-4, §18B-17-5, and §18B-17-6 of the Code of West Virginia, 1931, as amended, are repealed.

***NOTE:** This section was also amended by H. B. 3192 (Chapter 148), which passed prior to this Act.



CHAPTER 149

**(Com. Sub. for H. B. 3297 - By Delegates McGeehan,
Hanshaw (Mr. Speaker), Phillips, Ellington, Criss, Jeffries,
Gearheart, Riley, and Leavitt)**

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]
[Approved by the Governor on April 30, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding a new section, designated §18B-11-8, relating to creating the Washington Center for Civics, Culture, and Statesmanship within West Virginia University; requiring the university to work with the center to provide the center with reasonable infrastructure, classroom space, and office space; stating the center's purposes and goals; stating the center's policies; permitting the appointment of at least five tenure-track faculty; authorizing the center in consultation with the university to offer courses and to develop various degrees for accreditation; providing for a director of the center reporting directly to the president, provost, and vice president of academic affairs of the university; providing for the director's appointment and the filling of vacancies; providing for an academic council; enumerating areas over which the director has authority; providing that the director's authority shall be exercised in consultation with the president and the provost; requiring the center to adhere to institutional policies and procedures; requiring approval of the curriculum by the West Virginia University by the Board of Governors; requiring faculty to meet the university's qualifications policy; providing for limitations on employment and service of legislators; and providing for an annual report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.

§18B-11-8. Washington Center for Civics, Culture, and Statesmanship.

(a) There is hereby created the Washington Center for Civics, Culture, and Statesmanship, to be located and operated at West Virginia University who shall work with the center to provide reasonable infrastructure, classroom space, and office space. The center is established for the purpose of creating and disseminating knowledge about classical western history and culture and American constitutional thought and forming future leaders of this state through research, scholarship, teaching, collaboration, and mentorship.

(b) The center's goals shall include, but not be limited to, the following:

(1) To enrich the curriculum in American constitutional studies, including the core texts, influential thinkers, and great debates of western civilization;

(2) To educate university students in political philosophy, constitutional governance, economic thought, western history and culture, and the principles that inform republican self-government;

(3) To educate university students in the foundations of responsible leadership and informed citizenship and to cultivate future generations of leaders in this state;

(4) To offer university-wide programming related to the values of open inquiry and civil discourse;

(5) To expand the intellectual diversity of the university's academic community and to create a rich forum for the development of ideas across the political and ideological spectrum;

(6) To support faculty and graduate student scholarship that advances understanding of American constitutional thought and institutions;

(7) To promote scholarly collaboration within the university and beyond; and

(8) To host lectures, debates, and symposia, and sponsor visiting scholars, speakers, teachers, and thinkers.

(c) The center shall adhere to the following policies:

(1) The center shall educate students by means of free, open, and rigorous intellectual inquiry to seek the truth;

(2) The center shall equip students with the skills, habits, and dispositions of mind they need to reach their own informed conclusions on matters of social and political importance;

(3) The center shall value intellectual diversity in higher education, including in faculty recruitment, hiring, and appointment, and aspire to enhance the intellectual diversity of academic life at the university; and

(4) The center shall create a community dedicated to an ethic of civil and free inquiry, which respects the intellectual freedom of each member, supports individual capacities for growth, and welcomes the differences of opinion that naturally occur in a public university community.

(d) The center shall be a unit of the university with the authority to house tenure-track faculty who hold their appointments within the center. Not fewer than five tenure-track faculty positions shall be allotted to the center. Faculty appointed within the center shall not be required, but may be permitted, to hold joint or courtesy appointments within any other division of the university.

(e) To maintain accreditation, the center shall work with the university to develop and offer courses and may develop certificate, minor, major, and graduate programs, and offer degrees. The center shall work with the university to also develop a statesmanship minor that allows students taking different majors to study the principles of our republican government.

(f) The center shall be led by a director who shall report directly to the president of the university, the provost and the vice president for academic affairs. In consultation with the president of the university, the Governor shall, by and with the advice and consent of the Senate, appoint an initial director. The director shall be an expert on the western tradition, the American founding, and American constitutional thought, and shall have publicly demonstrated, through speeches, publications, or presentations, a commitment to the purposes, goals, and policies of the center. The director's term shall be for five years and shall be renewable. The director shall have the protection of tenure or tenure eligibility. Any existing tenure with the university held by a director shall be maintained with the university.

(g)(1) Not later than 120 days after the effective date of this section, the director shall appoint a seven-member center academic council. Four members of the council shall form a quorum.

(2) The academic council shall be comprised of scholars with relevant expertise and experience. Not more than one member of the council may be an employee of the university.

(3) Three members of the academic council shall serve initial terms of two years and four members shall serve initial terms of four years, which the members shall determine at their first meeting, and select replacements for vacant seats. All subsequent terms after the initial terms shall last for four years.

(4) To fill a vacancy for the center director after the initial director, following a national search, the academic council shall transmit to the Governor and the president of the university a list of finalists from which, in consultation with the president of the university, the Governor shall, by and with the advice and consent of the Senate, shall select a director.

(h) The director has authority over the following enumerated areas, but shall exercise that authority in consultation with the president and the provost:

(1) Managing the recruitment and hiring process and extending offers for employment for all faculty and staff;

(2) Terminating the employment of any staff;

(3) Tenure decisions affecting the center's professors and teachers;

(4) Overseeing and developing the center's curriculum: *Provided*, That the director shall consult with the university pursuant to subsection (e) of this section to ensure that accreditation is maintained;

(5) The center's budget and expenditures;

(6) Scheduling and holding any conferences relevant to the center's mission; and

(7) Scheduling, inviting, and hosting speakers and presenters.

(i) Any employment contracts made pursuant to subsection (h) of this section to tenure-track faculty appointed to the center shall, subject to available funding guarantee:

(1) Reappointment elsewhere in the university, at the same rank and compensation, in the event the center is discontinued; and

(2) An office in the department to which the professor or teacher is reappointed in the event the center is discontinued. The office in the new department shall be comparable, to the extent practicable, to the office space utilized by the professor or teacher during his or her time working for the center.

(j) The center, its personnel, and its financial operations, including how personnel are hired and reviewed, and what academic units must spend on office space must adhere to all institutional policies and procedures.

(k) Members of the legislature, during or up to two years after the termination of their service in the legislature, shall not:

(1) Be employed by the center in any capacity; or

(2) Serve as the director of the center.

(l) All instructional faculty at the center must meet the institution's faculty qualifications policy which meets Higher Learning Commission requirements and expectations.

(m) All curriculum developed at the institution is required to be reviewed and approved through regular Board of Governor's-level processes which includes expectations for faculty to perform meaningful assessment of learning.

(n) The director of the center shall submit an annual report to the West Virginia University Board of Governors and to the Joint Committee on Government and Finance. The report shall provide a full account of the center's achievements, opportunities, challenges, and obstacles in the development of this academic unit.



CHAPTER 150

(H. B. 3313 - By Delegates Dittman, Eldridge, Horst, Rohrbach, Campbell, Kyle, McCormick, Willis, Dean, Hott, and Miller)

[Passed April 7, 2025; in effect 90 days from passage (July 6, 2025)]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §18B-3C-4 of the Code of West Virginia, 1931, as amended, all relating to community and technical college/career and technical education consortia planning districts; adding Braxton County High School as a participating institution in the Southeastern District; and providing for partnerships outside designated region under certain conditions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-4. Community and technical college/career and technical education consortia planning districts.

(a) Unless otherwise designated, the presidents of the community and technical colleges facilitate formation of community and technical college/career and technical education consortia in the state. Each consortium includes representatives of community and technical colleges, public career and technical education centers and state baccalaureate institutions offering associate degrees. The consortium is responsible for carrying out the following actions:

(1) Completing a comprehensive assessment of the district to determine what education and training programs are necessary to

meet the short and long-term workforce development needs of the district and to identify the high-demand, high-wage occupations within the service district and develop programs of study, based on the findings, that consist of a curriculum of courses leading to an industry-recognized credential, a certificate of applied science degree or an associate degree;

(2) Coordinating efforts with regional labor market information systems to identify the ongoing needs of business and industry, both current and projected, and to provide information to assist in an informed program of planning and decision-making. The priority of each consortium is to identify the high-demand, high-wage occupations within the service district and, in conjunction with the public schools, develop integrated secondary and post-secondary programs of study that lead to an industry-recognized credential, a certificate of applied science degree or an associate degree;

(3) Developing integrated secondary and post-secondary programs of study that lead to an industry-recognized credential, a certificate of applied science degree or an associate degree to satisfy a workforce need as determined by the Department of Commerce. The Department of Commerce shall on occasion, but at least annually, provide written notification to the State Board of Education and the West Virginia Council for Community and Technical College Education a determination of areas of workforce need;

(4) Increasing the integration of secondary and post-secondary curriculum and programs that are targeted to meet regional and state labor market needs, including implementing seamless programs of study, including West Virginia EDGE, Advanced Career Education, Registered Apprenticeships and any program that allows students to earn college credit while they are still in high school;

(5) Ensuring that the programs of study include coherent and rigorous content aligned with challenging academic standards and relevant career and technical education content. The programs shall provide for student movement through a coordinated,

nonduplicative progression of courses that align secondary education with community and technical college education to prepare students to succeed at the community and technical college level and in high-wage, high-demand occupations;

(6) Planning and developing a unified effort between the community and technical colleges and public career and technical education to meet the documented workforce development needs of the district and state through individual and cooperative programs; shared facilities, faculty, staff, equipment and other resources; and the development and use of distance learning and other education technologies;

(7) Collaborating and developing jointly the collaborative programming for adults between the community and technical colleges and the public career and technical centers. The focus of these collaborative efforts is the development of advanced skill programming that builds on the secondary curriculum and allows career and technical education graduates to acquire more in-depth preparation in their occupational area of interest;

(8) As a consortium, regularly reviewing and revising curricula to ensure that the work force needs are met; developing new programs and phasing out or modifying existing programs, as appropriate, to meet such needs; and streamlining procedures for designing and implementing customized training programs;

(9) Planning and implementing integrated professional development activities for secondary and post-secondary faculty, staff and administrators;

(10) Ensuring that program graduates have attained the competencies required for successful employment through the involvement of business, industry and labor in establishing student credentialing;

(11) Assessing student knowledge and skills which may be gained from multiple sources so that students gain credit toward program completion and advance more rapidly without repeating course work in which they already possess competency;

(12) Cooperating with workforce investment boards to establish one-stop-shop career centers with integrated employment and training and labor market information systems that enable job seekers to assess their skills, identify and secure needed education training, and secure employment, and that allow employers to locate available workers;

(13) Increasing the integration of adult literacy, adult basic education, federal Workforce Innovation and Opportunity Act and community and technical college programs and services to expedite the transition of adults from welfare to gainful employment, including cooperating with the State Department of Education to provide adult basic education programs on each community and technical college campus in the state where developmental education services are provided; and

(14) Establishing a single point of contact for employers and potential employers to access education and training programs throughout the district.

(b) The community and technical college education consortium shall cooperate with the regional workforce investment board in the district and shall participate in any development or amendment to the regional workforce investment plan.

(c) To carry out the provisions of this section, community and technical college/career and technical education consortia planning districts are established and defined as follows:

(1) Northern Panhandle District includes Hancock, Brooke, Ohio, Marshall and Wetzel counties.

(A) The facilitating institution is West Virginia Northern Community and Technical College.

(B) Participating institutions include West Virginia Northern Community and Technical College; John Marshall High School; Cameron High School; John D. Rockefeller IV Career Center; and other public career and technical centers offering post-secondary programs.

(2) North Central West Virginia District includes Monongalia, Marion, Preston, Taylor, Barbour, Randolph, Doddridge, Harrison, Braxton, Lewis, Calhoun, Gilmer and Upshur counties.

(A) The facilitating institution is Pierpont Community and Technical College.

(B) Participating institutions include Pierpont Community and Technical College; Glenville State College; Randolph County Technical Center; Monongalia County Technical Education Center; United Technical Center; Marion County Technical Center; Fred W. Eberle Technical Center; Calhoun Gilmer Career Center; Taylor County Technical Center; and other public career and technical centers offering post-secondary programs.

(3) Mid-Ohio Valley District includes Tyler, Pleasants, Ritchie, Wood, Wirt, Jackson and Roane counties.

(A) The facilitating institution is West Virginia University at Parkersburg.

(B) Participating institutions include West Virginia University at Parkersburg; Roane-Jackson Technical Center; Wood County Technical Center; Mid-Ohio Valley Technical Institute and other public career and technical centers offering post-secondary programs.

(4) Potomac Highlands District includes Tucker, Pendleton, Grant, Hardy, Mineral and Hampshire counties.

(A) The facilitating institution is Eastern West Virginia Community and Technical College.

(B) Participating institutions include Eastern West Virginia Community and Technical College; South Branch Career and Technical Center; Mineral County Technical Center; and other public career and technical centers offering post-secondary programs.

(5) Shenandoah Valley District includes Berkeley, Jefferson and Morgan counties.

(A) The facilitating institution is Blue Ridge Community and Technical College.

(B) Participating institutions include Blue Ridge Community and Technical College; James Rumsey Technical Institute; and other public career and technical centers offering post-secondary programs.

(6) Advantage Valley District includes Fayette, Kanawha, Clay, Putnam, Cabell, Mason and Wayne counties.

(A) The facilitating institution for Cabell, Mason and Wayne counties is Mountwest Community and Technical College. The facilitating institution for Clay, Fayette, Kanawha and Putnam counties is BridgeValley Community and Technical College.

(B) Participating institutions include Mountwest Community and Technical College; BridgeValley Community and Technical College; Carver Career and Technical Education Center; Garnet Career Center; Ben Franklin Career and Technical Center; Putnam Career and Technical Center; Cabell County Career-Technology Center; Mason County Career Center; and other public career and technical centers offering post-secondary programs.

(7) Southern Mountains District includes Lincoln, Boone, Logan, Mingo, Wyoming and McDowell counties.

(A) The facilitating institution is Southern West Virginia Community and Technical College.

(B) Participating institutions include Southern West Virginia Community and Technical College; Boone County Career and Technical Center; Wyoming County Career and Technical Center; Ralph R. Willis Career and Technical Center; McDowell County Career and Technology Center; Mingo Extended Learning Center; and other public career and technical centers offering post-secondary programs.

(8) Southeastern District includes Raleigh, Summers, Fayette, Braxton, Nicholas, Webster, Pocahontas, Greenbrier, Monroe and Mercer counties.

(A) The facilitating institution is New River Community and Technical College.

(B) Participating institutions include New River Community and Technical College; BridgeValley Community and Technical College; Bluefield State College; Academy of Careers and Technology; Fayette Institute of Technology; Summers County High School; Monroe County Technical Center; Mercer County Technical Education Center; Braxton County High School; Nicholas County Career and Technical Center; and other public career and technical centers offering post-secondary programs.

(9) Cochairs preside over each consortium as follows:

(A) The president of the facilitating community and technical college, or his or her designee; and

(B) A career and technical education center administrator, or his or her designee, representing one of the participating institutions and selected by the consortium administrative leaders.

(10) A participating institution shall be permitted to partner without restriction, with community and technical colleges outside of its designated region if the assigned facilitating community and technical college does not offer a program and that program was not developed by the assigned facilitating community and technical college within two years of a formal request by a participating institution.

(d) In the role of the facilitating institution of the consortium, the college:

(1) Communicates to the council and state board;

(2) Facilitates the delivery of comprehensive community and technical college education in the region, which includes the seven areas of comprehensive community and technical college education delivery as required by §18B-3C-6 of this code;

(3) Facilitates development of a statement of commitment signed by all participating institutions in the region setting forth

how community and technical college education will be delivered; and

(4) Submits annually the Carl D. Perkins local planning guide to the council and the state board.

(e) The state board and council shall jointly promulgate guidelines for the administration of this section. The guidelines shall be affirmatively adopted by both the board and the council. At a minimum, such guidelines shall provide for the following:

(1) Participating institutions are not subordinate to the facilitating institution but shall sign the statement of commitment to participate.

(2) Integrated secondary and post-secondary programs of study that lead to an industry-recognized credential, a certificate of applied science degree or an associate degree shall be reduced to written partnership agreements;

(3) The programs of study must meet the requirements of the accrediting entity for the community and technical college awarding the associate degrees;

(4) That partnership agreements must be approved by the State Superintendent of Schools and the Chancellor for the Council for Community and Technical College Education; and

(5) Any other provisions necessary to effectuate the purposes of this section.

(f) The State Superintendent of Schools and the Chancellor for the Council for Community and Technical College Education are responsible for annually evaluating the progress made in meeting the goals for each consortium through the development and collection of performance indicator data.

(g) The State Superintendent of Schools and the Chancellor for the Council for Community and Technical College Education shall annually report to the Governor and the Legislative Oversight Commission on Education Accountability on the implementation of this section.

CHAPTER 151

**(Com. Sub. for Com. Sub. for S. B. 474 - By Senator Smith
(Mr. President))**

(By Request of the Executive)

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]
[Approved by the Governor on April 30, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding two new articles, designated §5-33-1, §5-33-2, §5-33-3, §18B-1G-1, §18B-1G-2, §18B-1G-3, §18B-1G-4, and §18B-1G-5; and to amend the code by adding five new sections, designated §18-2-9b, §18-5-29, §18-5-50, §18B-14-5, and §18B-14-6, relating to the elimination of diversity, equity, and inclusion programs, trainings, activities, offices, and officers from the executive branch, primary and secondary schools, and institutions of higher education of the state; setting forth legislative findings; defining terms; providing for a complaint and appeals process for parents and guardians of students aggrieved under the bill; requiring reporting from school principals, county superintendents, and the state superintendent; providing county board and public charter school employees with immunity from civil liability; allowing for county boards to operate legal compliance offices; requiring institutions of higher education to report on its efforts to eliminate diversity, equity, and inclusion programs and offices; and requiring state institutions of higher education to reallocate any unexpended funds that would have been expended on diversity, equity, and inclusion projects.

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 33. EQUAL TREATMENT BY EXECUTIVE
BRANCH ACT OF 2025.**

§5-33-1. Legislative findings.

The purpose of this article is to ensure that the various departments, divisions, agencies, and boards of the State of West Virginia are treating individuals as equals under the law with respect to recruitment, hiring, promotion, and training.

§5-33-2. Definitions.

As used in this article:

(1) "Diversity, equity, and inclusion" means any action, attempt, or effort to:

(A) Influence hiring or employment practices with respect to race, color, sex, ethnicity, or national origin, other than through the use of color-blind and sex-neutral hiring processes in accordance with any applicable state and federal anti-discrimination laws;

(B) Promote or provide special benefits to individuals on the basis of race, color, ethnicity, or national origin;

(C) Promote policies or procedures designed or implemented in reference to race, color, ethnicity, or national origin, other than to ensure compliance with an applicable court order or state or federal law; or

(D) Conduct trainings, programs, or activities designed or implemented in reference to race, color, ethnicity, or national origin, other than trainings, programs, or activities developed for the sole purpose of ensuring compliance with an applicable court order or state or federal law;

(2) "Ethnic group" means a category of population that is set apart and bound together by common ties of race, language, nationality, or culture;

(3) "Race" means any one of the groups that humans are often divided into based on physical traits regarded as common among people of shared ancestry; and

(4) "Sex", when this term is used to classify or describe a natural person, means the state of being either male or female as observed or clinically verified at birth. There are only two sexes, and every individual is either male or female: *Provided*, That individuals with congenital and medically verifiable "DSD conditions" (sometimes referred to as "differences in sex development", "disorders in sex development", or "intersex conditions") are not members of a third sex and must be accommodated consistent with state and federal law.

§5-33-3. Prohibition.

(a) No department, division, agency, or board of this state may:

(1) Establish or maintain an office or division or other unit by any name whose purpose, in whole or in part, is the promotion of diversity, equity, and inclusion;

(2) Hire or assign an employee or contract with a third party to promote diversity, equity, and inclusion;

(3) Compel, require, induce, or solicit any person to provide a diversity, equity, and inclusion statement or give preferential consideration to any person based on the provision of a diversity, equity, and inclusion statement;

(4) Give preference on the basis of diversity, equity, and inclusion to an applicant for employment, an employee, or a participant in any function of the office or department; or

(5) Requiring as a condition of employment that an employee participate in diversity, equity, and inclusion training.

(b) Nothing in this article may be construed to abrogate individuals' rights and causes of action under the West Virginia Human Rights Act.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-9b. Equal Treatment in Primary and Secondary Education Act of 2025.

(a) As used in this section:

(1) "Ethnic group" means a category of population that is set apart and bound together by common ties of race, language, nationality, or culture;

(2) "Race" means any one of the groups that humans are often divided into based on physical traits regarded as common among people of shared ancestry; and

(3) "Sex", when this term is used to classify or describe a natural person, means the state of being either male or female as observed or clinically verified at birth. There are only two sexes, and every individual is either male or female: *Provided*, That individuals with congenital and medically verifiable "DSD conditions" (sometimes referred to as "differences in sex development", "disorders in sex development", or "intersex conditions") are not members of a third sex and must be accommodated consistent with state and federal law.

(b) A school district, a public charter school, the West Virginia Board of Education, the West Virginia Department of Education, or any employee of the aforementioned entities may not provide instruction in, require instruction in, make part of a course, or require a statement or affirmation by any employee of the following concepts:

(1) One race, ethnic group, or sex is morally or intellectually superior to another race, ethnic group, or sex for any inherent or innate reason;

(2) An individual, by virtue of the individual's race, ethnicity, or sex, is racist, sexist, or oppressive, whether consciously or unconsciously for any inherent or innate reason;

(3) An individual should be discriminated against or receive adverse treatment solely or partly because of the individual's race, ethnicity, or sex;

(4) An individual's moral character is strongly influenced by the individual's race, ethnicity, or sex;

(5) An individual, by virtue of the individual's race, ethnicity, or sex, bears responsibility for actions committed by other members of the same race, ethnic group, or sex;

(6) An individual should feel discomfort, guilt, anguish, or any other form of psychological distress because of the individual's race, ethnicity, or sex; and

(7) Academic achievement, meritocracy, or traits such as a hard work ethic are racist or sexist or were created by members of a particular race, ethnic group, or sex to oppress members of another race, ethnic group, or sex.

(c) Nothing in subsection (b) of this section prohibits:

(1) The discussion of those concepts in theory as part of an academic course if discussion of alternative theories is also included in the course;

(2) The discussion, examination and debate that race, ethnicity, or sex has impacted historical or current events, including the causes of those current or historical events;

(3) The right to freedom of speech protected by the First Amendment of the United States Constitution and the West Virginia Constitution outside the context of employment with any school district or public charter school; and

(4) An office or position operating with the sole and exclusive mission of ensuring legal compliance under Title IX of the federal

Education Amendments Act of 1972, 20 U.S.C. §1681 *et seq.*, as amended, the federal Age Discrimination in Employment Act of 1972, 20 U.S.C. §1681 *et seq.*, as amended, the federal Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, as amended, the federal Civil Rights Act of 1964, Pub. L. No. 88-352, as amended, the West Virginia Human Rights Act, West Virginia Code §5-11-1 *et seq.*, or any other applicable federal or state law or court order.

(d) Any student, parent, or guardian of a student, or employee aggrieved by an alleged violation of this section may file a complaint with the school principal.

(e) Any complainant, upon an adverse ruling or no ruling within 10 business days by the school principal, may file an appeal to the county superintendent except that in the case of a student enrolled in or an employee of a public charter school, the complainant may file an appeal to the authorizer.

(f) Any complainant, upon an adverse ruling or no ruling within 10 business days by the county superintendent or public charter school authorizer, may file an appeal to the State Superintendent. The state superintendent shall make forms available for students, parents or guardians of a student, and employees to file complaints and appeals pursuant to this subsection.

(g) Each school principal shall report the number of complaints filed with him or her the previous school year, the nature of each complaint, and the resolution of each complaint to the county superintendent annually by August 1.

(h) The county superintendent shall report the number of complaints filed in his or her county the previous school year, the nature of each complaint, and the resolution of each complaint to the State Superintendent annually by September 1.

(i) The State Superintendent, or his or her designee, shall report to the Legislative Oversight Commission on Education Accountability the number of complaints filed during the previous school year statewide and by county, the nature of each complaint, and the resolution of each complaint annually by October 1.

ARTICLE 5. COUNTY BOARD OF EDUCATION.**†*§18-5-29. Preferred gender pronouns.**

(a) For the purposes of this section: "Sex", when this term is used to classify or describe a natural person, means the state of being either male or female as observed or clinically verified at birth. There are only two sexes, and every individual is either male or female: *Provided*, That individuals with congenital and medically verifiable "DSD conditions" (sometimes referred to as "differences in sex development", "disorders in sex development", or "intersex conditions") are not members of a third sex and must be accommodated consistent with state and federal law.

(b) County board and public charter school employees shall not be:

(1) Required to use a student's preferred pronoun when referring to the student if the preferred pronoun is not consistent with the student's sex;

(2) Civilly liable for using a pronoun that is consistent with the sex of the student to whom the teacher or employee is referring, even if the pronoun is not the student's preferred pronoun; and

(3) Subject to an adverse employment action for not using a student's preferred pronoun if the student's preferred pronoun is inconsistent with the student's sex.

(c) A county board or public charter school is not civilly liable if a county board or public charter school employee refers to a student using a pronoun that is consistent with the sex of the student to whom the employee is referring, even if the pronoun is not the student's preferred pronoun.

(d) No county board or public charter school may establish a policy or take any action that is contrary to this section.

†**NOTE:** S. B. 474 (Chapter 151) which passed subsequent to this Act, also created a new Section 30. Therefore, has been redesignated as Section 30 for the code.

***NOTE:** This section was also amended by S. B. 474 (Chapter 151), which passed prior to this Act.

(e) Nothing in this article may be construed to abrogate individuals' rights and causes of action under the West Virginia Human Rights Act.

§18-5-50. Legal compliance offices.

Nothing in this article shall preclude a county school board from operating an office or position operating with the sole and exclusive mission of ensuring legal compliance under Title IX of the federal Education Amendments Act of 1972, 20 U.S.C. §1681 *et seq.*, as amended, the federal Age Discrimination in Employment Act of 1972, 20 U.S.C. §1681 *et seq.*, as amended, the federal Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, as amended, the federal Civil Rights Act of 1964, Pub. L. No. 88-352, as amended, the West Virginia Human Rights Act, West Virginia Code §5-11-1 *et seq.*, or any other applicable federal or state law or court order.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1G. DIVERSITY, EQUITY, AND INCLUSION OFFICES AND OFFICERS PROHIBITED.

§18B-1G-1. Definitions.

As used in this section:

(1) "Diversity, equity, and inclusion" means any action, attempt, or effort to:

(A) Influence hiring or employment practices with respect to race, color, sex, ethnicity, or national origin, other than through the use of color-blind and sex-neutral hiring processes in accordance with any applicable state and federal anti-discrimination laws;

(B) Promote or provide special benefits to individuals on the basis of race, color, ethnicity, or national origin;

(C) Promote policies or procedures designed or implemented in reference to race, color, ethnicity, or national origin, other than

to ensure compliance with an applicable court order or state or federal law; or

(D) Conduct trainings, programs, or activities designed or implemented in reference to race, color, ethnicity, or national origin, other than trainings, programs, or activities developed for the sole purpose of ensuring compliance with an applicable court order or state or federal law.

(2) "Diversity, equity, and inclusion office" means an office, division, or other unity of an institution of higher education tasked with diversity, equity, or inclusion actions, attempts, or efforts;

(3) "Diversity, equity, and inclusion officer" means any officer, employee, or agent of an institution of higher education tasked with diversity, equity, or inclusion actions, attempts, or efforts;

(4) "Ethnic group" means a category of population that is set apart and bound together by common ties of race, language, nationality, or culture;

(5) "Race" means any one of the groups that humans are often divided into based on physical traits regarded as common among people of shared ancestry; and

(6) "Sex", when this term is used to classify or describe a natural person, means the state of being either male or female as observed or clinically verified at birth. There are only two sexes, and every individual is either male or female: *Provided*, That individuals with congenital and medically verifiable "DSD conditions" (sometimes referred to as "differences in sex development", "disorders in sex development", or "intersex conditions") are not members of a third sex and must be accommodated consistent with state and federal law.

§18B-1G-2. Restrictions.

(a) A state institution of higher education and each governing board of a state institution of higher education shall ensure that each unit of the institution does not:

(1) Establish, sustain, support, staff, or maintain a diversity, equity, and inclusion officer or office;

(2) Hire or assign an employee of the institution or contract with a third party to perform the duties of a diversity, equity, and inclusion office;

(3) Compel, require, induce, or solicit any person to provide a diversity, equity, and inclusion statement or give preferential consideration to any person based on the provision of a diversity, equity, and inclusion statement;

(4) Give preference on the basis of diversity, equity, and inclusion to an applicant for employment, an employee, or a participant in any function of the institution; or

(5) Require as a condition of enrolling at the institution or performing any institution function any person to participate in diversity, equity, and inclusion training.

(b) A state institution of higher education and each governing board of a state institution of higher education shall ensure that each unit of the institution shall adopt policies and procedures for appropriately disciplining, including by termination, an employee or contractor of the institution who engages in conduct in violation of subsection (a) of this section.

(c) Subsection (a) of this section shall not be construed to cover or affect a state institution of higher education's support of any of the following:

(1) Academic course instruction;

(2) Research or creative works by the state institution of higher education's students, faculty, or other research personnel, and the dissemination of such research or creative works;

(3) Activities of registered student organizations;

(4) Arrangements for guest speakers and performers with short-term engagements;

(5) Mental or physical health services provided by licensed professionals;

(6) Services or support provided to individuals with learning, physical or neurological developmental disabilities;

(7) Policies, programing, training, practices, activities, or procedures designed to prevent sexual harassment or to meet accreditation standards;

(8) Data collection;

(9) Sex-based educational opportunities such as science, technology, engineering, and mathematics (STEM) opportunities for women;

(10) Donor-designated scholarships;

(11) Single-sex athletic programs, events, or teams;

(12) Single-sex spaces including restrooms, changing rooms, locker rooms, showers, sleeping quarters, and dorms;

(13) Compliance with the state institution of higher education's obligations under Title IX of the federal Education Amendments Act of 1972, 20 U.S.C. §1681 *et seq.*, as amended, the federal Age Discrimination in Employment Act of 1972, 20 U.S.C. §1681 *et seq.*, as amended, the federal Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, as amended, the federal Civil Rights Act of 1964, Pub. L. No. 88-352, as amended, the West Virginia Human Rights Act, West Virginia Code §5-11-1 *et seq.*, or any other applicable federal or state law or court order.

§18B-1G-3. Exceptions.

(a) "Diversity, equity, and inclusion office" does not include any of the following:

(1) An office or position operating with the sole and exclusive mission of ensuring legal compliance under Title IX of the federal Education Amendments Act of 1972, 20 U.S.C. §1681 *et seq.*, as amended, the federal Age Discrimination in Employment Act of

1972, 20 U.S.C. §1681 *et seq.*, as amended, the federal Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, as amended, the federal Civil Rights Act of 1964, Pub. L. No. 88-352, as amended, the West Virginia Human Rights Act, West Virginia Code §5-11-1 *et seq.*, or any other applicable federal or state law or court order;

(2) An academic department within a state institution of higher education that exists primarily for the purpose of offering courses for degree credit and that does not establish a policy or procedures to which other departments of the public institutions of higher education are subject;

(3) A registered student organization;

(4) An office or position engaged in providing services or support to individuals with learning, physical or neurological developmental disabilities; or

(5) A unit which may provide resources to certain individuals as long as the resources are equally available to all employees or students regardless of race, color, or ethnicity.

(b) "Diversity, equity, and inclusion officer" does not include any of the following:

(1) Any employee whose sole job duties are to ensure compliance with the state institution of higher education's obligations under Title IX of the federal Education Amendments Act of 1972, 20 U.S.C. §1681 *et seq.*, as amended, the federal Age Discrimination in Employment Act of 1972, 20 U.S.C. §1681 *et seq.*, as amended, the federal Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, as amended, the federal Civil Rights Act of 1964, Pub. L. No. 88-352, as amended, the West Virginia Human Rights Act, West Virginia Code §5-11-1 *et seq.*, or any other applicable federal or state law or court order;

(2) Any faculty member while engaged in teaching, research, or the production of creative works, the dissemination of the faculty member's research or creative works, or advising a registered student organization; or

(3) A guest speaker or performer with a short-term engagement.

(c) Nothing in this article may be construed to limit or prohibit an institution of higher education or an employee of an institution of higher education from, for purposes of applying for a grant or complying with the terms of accreditation by an accrediting agency, submitting to the grantor or accrediting agency a statement that:

Highlights the institution's work in supporting:

(A) First-generation college students;

(B) Low-income students; or

(C) Underserved student populations.

§18B-1G-4. Reporting.

(a) A state institution of higher education shall file and certify with the Joint Committee on Education a report of the steps taken by the academic institution of higher education and its staff, administration, and faculty to comply with this article.

(b) The state institution of higher education shall publish the report described in subsection (a) of this section on the institution of higher education's webpage.

(c) The state institution of higher education shall file the report described in subsection (a) of this section by July 1, 2025, and on July 1 of each year thereafter, or the state institution of higher education shall not be permitted to expend any moneys appropriated by the Legislature for the next fiscal year.

§18B-1G-5. Spending.

A state institution of higher education shall reallocate any and all unexpended moneys appropriated by the Legislature in fiscal year 2025-2026 that would have been expended on prohibited diversity, equity, and inclusion offices and officers on or after the effective date of this article to merit scholarships for lower-income

and middle-income students, first generation college students, or to reduce tuition and mandatory fees for resident students.

ARTICLE 14. MISCELLANEOUS.

§18B-14-5. Equal Treatment in Higher Education Act of 2025.

(a) As used in this section:

(1) "Diversity, equity, and inclusion" means any action, attempt, or effort to:

(A) Influence hiring or employment practices with respect to race, color, sex, ethnicity, or national origin, other than through the use of color-blind and sex-neutral hiring processes in accordance with any applicable state and federal anti-discrimination laws;

(B) Promote or provide special benefits to individuals on the basis of race, color, ethnicity, or national origin;

(C) Promote policies or procedures designed or implemented in reference to race, color, ethnicity, or national origin, other than to ensure compliance with an applicable court order or state or federal law; or

(D) Conduct trainings, programs, or activities designed or implemented in reference to race, color, ethnicity, or national origin, other than trainings, programs, or activities developed for the sole purpose of ensuring compliance with an applicable court order or state or federal law;

(2) "Ethnic group" means a category of population that is set apart and bound together by common ties of race, language, nationality, or culture;

(3) "Race" means any one of the groups that humans are often divided into based on physical traits regarded as common among people of shared ancestry; and

(5) "Sex", when this term is used to classify or describe a natural person, means the state of being either male or female as observed or clinically verified at birth. There are only two sexes,

and every individual is either male or female: *Provided*, That individuals with congenital and medically verifiable "DSD conditions" (sometimes referred to as "differences in sex development", "disorders in sex development", or "intersex conditions") are not members of a third sex and must be accommodated consistent with state and federal law.

(b) State institutions of higher education in this state have an obligation to prohibit, among other things, discrimination on the basis of race or ethnic group in the administration of their education programs, activities, or with respect to admission or employment.

(c) State institutions of higher education have an obligation to protect the right to free speech and expression protected by the First Amendment of the United States Constitution, the West Virginia Constitution, and the provisions of §18B-20-1 *et seq.* As part of that commitment, state institutions of higher education must be committed to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the university community to be offensive, unwise, immoral, or misguided and that it is for the individual members of the university community, not for the university as an institution, to make those judgements for themselves.

(d) Except as provided in subsection (e) of this section, a state institution of higher education or any employee of a state institution of higher education may not require a student or employee to take instruction in, or include in the curriculum of any required course, or require a statement or affirmation by any student or employee that the following concepts are factual and accurate or must be held as a belief of the student or employee:

(1) One race, ethnic group, or sex is morally, or intellectually superior to another race, ethnic group, or sex for any inherent or innate reason;

(2) An individual, by virtue of the individual's race, ethnicity, or sex, is racist, sexist, or oppressive, whether consciously or unconsciously for any inherent or innate reason;

(3) An individual should be discriminated against because of the individual's race, ethnicity, or sex;

(4) An individual's moral character is strongly influenced by the individual's race, ethnicity, or sex;

(5) An individual, by virtue of the individual's race, ethnicity, or sex, bears responsibility for actions committed by other members of the same race, ethnic group, or sex;

(6) An individual has an obligation to feel discomfort, guilt, anguish, or any other form of psychological distress because of the individual's race, ethnicity, or sex; and

(7) Academic achievement, meritocracy, or traits such as a hard work ethic are racist or sexist or were created by members of a particular race, ethnic group, or sex to oppress members of another race, ethnic group, or sex.

(e) Nothing in subsection (d) of this section prohibits:

(1) The discussion of those concepts in theory as part of an academic course if discussion of alternative theories is also included in the course;

(2) The discussion, examination, and debate that race, ethnicity, or sex has impacted historical or current events, including the causes of those current or historical events; and

(3) The right to freedom of speech protected by the First Amendment of the United States Constitution and the West Virginia Constitution.

(f) Each campus shall report to the Higher Education Policy Commission or the Council for Community and Technical College Education, as applicable, a description of any violations of this section. The description shall include the nature of each incident, as well as what disciplinary action, if any, was taken against members of the campus community determined to be responsible for those specific incidents of violation and shall be reported without revealing personally identifiable information annually, by

August 1. The commission and council shall then report to the Legislative Oversight Commission on Education Accountability any violations reported to them pursuant to this subsection.

§18B-14-6. Nondiscrimination.

(a) It is the policy of the state that the administrations of state institutions of higher education, and their administrative units, be officially neutral with regard to widely contested opinions in the state regarding unconscious or implicit bias, cultural appropriation, identity group allyship, micro aggressions, group marginalization, systemic oppression, social justice, intersectionality, neo-pronouns, racial privilege, critical race theory, and any related formulation of these concepts.

(b) "Diversity, Equity, and Inclusion Training" means:

(1) Training toward any diversity, equity, and inclusion activity which seeks to:

(A) Manipulate or otherwise influence the composition of the faculty or student body with reference to race, color, sex, ethnicity, or national origin, apart from ensuring colorblind and sex-neutral admissions and hiring in accordance with state and federal anti-discrimination laws;

(B) Engage in, or promote or promulgate for, differential attention to, treatment of, or provision of special benefits to, individuals or groups on the basis of race, color, ethnicity, or national origin except where permitted by law; or

(C) Promote as the official position of the institution or component thereof, or of the administration, or develop or engage in training, programming, or activities promoting, a widely contested opinion in contravention of the neutral educational policy of this state as described in subsection (a) of this section; or

(2) Training from an administrative official or administrative unit of an institution that involves one or more of the following interrelated concepts:

(A) The nation, the state, American or state culture, society in general is based on or significantly influence by present-day institutional structures or relations of power, privilege, subordination, or oppression that operate on the basis of race, sex, color, ethnicity, national origin, or any intersection of these classes;

(B) Special benefits should be conferred on the basis of race, color, ethnicity, or national origin; or

(C) Unconscious or implicit bias, cultural appropriation, identity group allyship, microaggressions, micro-invalidating, group marginalization, systemic oppression, structural racism, structural inequity, racial privilege, social justice, intersectionality, neo-pronouns, inclusive language, or related formulation of these concepts.

(c) No diversity statement shall ever be required or solicited as part of an admissions process, employment application process, hiring process, contract renewal process, or promotion process; or as a condition of participation in any administrative or decision-making function of any public institution of higher education.

(d) No public institution of higher education shall give preferential consideration to an applicant, student, staff member, or faculty member due to any opinion expressed or action taken in support of another individual or a group of individuals on the basis of race, color, ethnicity, or national origin.



CHAPTER 152

(H. B. 2575 - By Delegates Hall, Pinson, Drennan, Stephens, Heckert, Petitto, Worrell, Dittman, W. Clark, and Hamilton)

[Passed April 12, 2025; in effect 90 days from passage (July 10, 2025)]

[Approved by the Governor on April 30, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding a new section, designated §16-5R-9, relating to the establishment of a full-time Dementia Services Director position.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5R. THE ALZHEIMER'S SPECIAL CARE STANDARDS ACT.

§16-5R-9. Establishment of a Dementia Services Director position.

The Department of Health shall establish a Dementia Services Director as a full-time, permanent position.

In collaboration with relevant stakeholders and state agencies, the Dementia Services Director shall:

(1) Coordinate implementation of the State Alzheimer's Disease and Other Dementia Plan;

(2) Evaluate the coordination of dementia services within this state;

(3) Evaluate all applicable state government services and make recommendations to increase efficiency and improve the quality of care in residential and home and community-based settings;

(4) Identify:

(A) Any duplicated services; and

(B) Grant opportunities to expand the scope of services for persons living with dementia and their caregivers and apply for the grant opportunities;

(5) Evaluate information and resources affecting West Virginians living with dementia and their caregivers, including:

(A) Support the provision of dementia-specific staff training across all relevant state agencies; and

(B) Recommend strategies to improve access to and coordination of dementia-related services and resources provided by public and private entities;

(6) Complete other duties relevant to supporting policy development and implementation to enhance the quality of life for persons affected by dementia and their caregivers;

(7) Promote public and professional awareness and education of dementia and access to needed services and programs;

(8) Collect and monitor dementia-related data to coordinate ways to improve public outcomes and service delivery; and

(9) Compile an annual report that is available on the Department's publicly accessible website outlining implementation status of the state plan, funding through grant applications, and office deliverables.



CHAPTER 153

(Com. Sub. for S. B. 800 - By Senators Azinger and Oliverio)

[Passed April 11, 2025; to take effect January 1, 2026]

[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §33-27-2, §33-27-4, §33-27-5, §33-27-6a, §33-27-7, and §33-27-8 of the Code of West Virginia, 1931, as amended, relating to insurance holding company systems; defining terms; requiring an insurance company that is a member of an insurance holding company system to annually file a group capital calculation and providing exemptions thereto; requiring the filing of results from a liquidity stress test by an insurance company that is a member of an insurance holding company system and is scoped into the National Association of Insurance Commissioners' liquidity stress test framework; requiring that a liquidity stress test comply with the National Association of Insurance Commissioners' liquidity stress test framework's instructions and reporting templates; permitting the Insurance Commissioner to require an insurance company that is in a hazardous financial condition or a condition that would be grounds for supervision, conservation, or a delinquency proceeding to secure and maintain either a deposit to be held by the commissioner or a bond at the insurer's discretion for the protection of the insurer while in an insurance holding company system; requiring all records and data of an insurance company being held by an affiliate of the insurer to remain the property of the insurer and subject to the insurer's control; providing that an affiliate of a domestic insurance company is subject to the Insurance Commissioner's jurisdiction and authority with respect to any supervision, seizure, conservatorship, or receivership proceedings of the insurer; making an insurance company that is a member of an insurance

holding company system liable to the Insurance Commissioner for the reasonable expenses incurred by the commissioner for his or her participation in a supervisory college; requiring the Insurance Commissioner to keep information related to a group capital calculation and liquidity stress test confidential; and prohibiting the storing of certain insurance holding company system information shared by the Insurance Commissioner with the National Association of Insurance Commissioners.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-2. Definitions.

As used in this article:

(1) An "affiliate" of, or person "affiliated" with, a specific person means a person that, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(2) "Commissioner" means the West Virginia Insurance Commissioner, his or her deputies, or the West Virginia offices of the Insurance Commissioner, as appropriate.

(3) "Control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by §33-27-4(k) of this code that control does not exist in fact. The

commissioner may determine after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination that control exists in fact, notwithstanding the absence of a presumption to that effect.

(4) "Enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level, as set forth in §33-40-1 *et seq.* of this code, or would cause the insurer to be in hazardous financial condition, as set forth in §33-34-1 *et seq.* of this code.

(5) "Group capital calculation instructions" means the group capital calculation instructions as adopted by the NAIC and as amended by the NAIC, from time to time, in accordance with the procedures adopted by the NAIC.

(6) "Group-wide supervisor" means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the commissioner under §33-27-6b of this code to have sufficient significant contacts with the internationally active insurance group.

(7) "Insurance holding company system" means a system that consists of two or more affiliated persons, one or more of which is an insurer.

(8) "Insurer" means any person, persons, corporation, partnership, or company authorized by the laws of this state to transact the business of insurance in this state, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(9) "Internationally active insurance group" means an insurance holding company system that includes an insurer

registered under §33-27-4 of this code and meets the following criteria:

(A) Premiums written in at least three countries;

(B) The percentage of gross premiums written outside the United States is at least 10 percent of the insurance holding company system's total gross written premiums; and

(C) Based on a three-year rolling average, the total assets of the insurance holding company system are at least \$50 billion or the total gross written premiums of the insurance holding company system are at least \$10 billion.

(10) "NAIC" means the National Association of Insurance Commissioners.

(11) "NAIC liquidity stress test framework" means a NAIC publication that includes a history of the NAIC's development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates for a specific data year, such scope criteria, instructions, and reporting template being as adopted by the NAIC and as amended by the NAIC, from time to time, in accordance with the procedures adopted by the NAIC.

(12) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert, but does not include any joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

(13) "Scope criteria," as detailed in the NAIC liquidity stress test framework, means the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC liquidity stress test framework for that data year.

(14) A "security holder" of a specified person means one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(15) A "subsidiary" of a specified person means an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(16) "Voting security" includes any security convertible into or evidencing a right to acquire a voting security.

§33-27-4. Registration of insurers; information and form required; summary of changes to registration statement; materiality; reporting of dividends to shareholders; information to insurers; termination of registration; consolidated filing; alternative registration; exemptions; disclaimer; enterprise risk filing; group capital calculation filing; liquidity stress test filing; violations.

(a) *Registration.* — (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:

(A) This section;

(B) §33-27-5(a), §33-27-5(b), and §33-27-5(c) of this code; and

(C) Either §33-27-5(d) of this code or a provision such as the following: "Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each change or addition".

(2) Any insurer which is subject to registration under this section shall register within 15 days after it becomes subject to registration and annually thereafter by June 1 of each year for the

previous calendar year, unless the commissioner for good cause shown extends the time for registration. The commissioner may require any authorized insurer which is a member of an insurance holding company system which is not subject to registration under this section to furnish a copy of the registration statement, the summary described in subsection (c) of this section, or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) *Information and form required.* — Every insurer subject to registration shall file a registration statement with the commissioner on a form and in a format prescribed by the National Association of Insurance Commissioners (NAIC), which shall contain the following current information:

(1) The capital structure, general financial condition, ownership and management of the insurer, and any person controlling the insurer;

(2) The identity and relationship of every member of the insurance holding company system;

(3) The following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(A) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(B) Purchases, sales, or exchanges of assets;

(C) Transactions not in the ordinary course of business;

(D) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(E) All management agreements, service contracts, and all cost-sharing arrangements;

(F) All reinsurance agreements;

(G) Dividends and other distributions to shareholders; and

(H) Consolidated tax allocation statements;

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(5) If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this subdivision may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC;

(6) Other matters concerning transactions between registered insurers and any affiliates as may be included, from time to time, in any registration forms adopted or approved by the commissioner;

(7) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and

(8) Any other information required by the commissioner by rule.

(c) *Summary of changes to registration statement.* — All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) *Materiality.* — Information need not be disclosed on the registration statement filed pursuant to subsection (b) of this section if such information is not material for the purpose of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one half of one percent or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section. The definition of materiality provided in this subsection shall not apply for the purposes of the group capital calculation or the liquidity stress test framework.

(e) *Reporting of dividends to shareholders.* — Subject to §33-27-5(c) of this code, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within 15 business days following the declaration thereof.

(f) *Information to insurers.* — Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, when such information is reasonably necessary to enable the insurer to comply with the provisions of this article.

(g) *Termination of registration.* — The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(h) *Consolidated filing.* — The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(i) *Alternative registration.* — The commissioner may allow an insurer which is authorized to do business in this state and which is a part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under §33-27-4(a) of this code and to file all information and material required to be filed under this section.

(j) *Exemptions.* — The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by rule or order shall exempt the same from the provisions of this section.

(k) *Disclaimer.* — Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming such affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within 30 days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted, and the commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been approved.

(l) *Enterprise Risk Filings.* —

(1) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC.

(2) *Group capital calculation.* —

(A) Except as provided below, the ultimate controlling person of every insurer subject to registration shall concurrently file with

the registration an annual group capital calculation as directed by the lead state commissioner. The report shall be completed in accordance with the NAIC group capital calculation instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the procedures within the Financial Analysis Handbook adopted by the NAIC. The following insurance holding company systems are exempt from filing the group capital calculation:

(i) An insurance holding company system that has only one insurer within its holding company structure, that only writes business, and is only licensed in its domestic state, and assumes no business from any other insurer;

(ii) An insurance holding company system that is required to perform a group capital calculation specified by the United States Federal Reserve Board. The lead state commissioner shall request the calculation from the Federal Reserve Board under the terms of information sharing agreements in effect. If the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing;

(iii) An insurance holding company system whose non-United States group-wide supervisor is located within a reciprocal jurisdiction as described in §33-4-15a(b)(2)(F) of this code that recognizes the United States state regulatory approach to group supervision and group capital; and

(iv) An insurance holding company system:

(I) That provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead state to comply with the NAIC group

supervision approach, as detailed in the Financial Analysis Handbook adopted by the NAIC; and

(II) Whose non-United States group-wide supervisor that is not in a reciprocal jurisdiction recognizes and accepts, as specified by the commissioner in rule, the group capital calculation as the world-wide group capital assessment for United States insurance groups who operate in that jurisdiction.

(B) Notwithstanding the provisions of §33-27-4(l)(2)(A)(iii) and §33-27-4(l)(2)(A)(iv) of this code, a lead state commissioner shall require the group capital calculation for United States operations of any non-United States based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

(C) Notwithstanding the exemptions from filing the group capital calculation stated in §33-27-4(l)(2)(A) of this code, the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the commissioner in rule or regulation.

(D) If the lead state commissioner determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this section, the insurance holding company system shall file the group capital calculation at the next annual filing date unless given an extension by the lead state commissioner based on reasonable grounds shown.

(3) *Liquidity stress test.* —

(A) The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC liquidity stress test framework shall file the results of a specific year's liquidity stress test. The filing shall be made to the lead state insurance

commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC.

(i) The NAIC liquidity stress test framework includes scope criteria applicable to a specific data year. These scope criteria are reviewed at least annually by the NAIC Financial Stability Task Force or its successor. Any change to the NAIC liquidity stress test framework or to the data year for which the scope criteria are to be measured shall be effective on January 1 of the year following the calendar year when such changes are adopted. Insurers meeting at least one threshold of the scope criteria are considered scoped into the NAIC liquidity stress test framework for the specified data year unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the framework for that data year. Similarly, insurers that do not trigger at least one threshold of the scope criteria are considered scoped out of the NAIC liquidity stress test framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should be scoped into the framework for that data year.

(I) Regulators wish to avoid having insurers scoped in and out of the NAIC liquidity stress test framework on a frequent basis. The lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, will assess this concern as part of the determination for an insurer.

(ii) The performance of, and filing of the results from, a specific year's liquidity stress test shall comply with the NAIC liquidity stress test framework's instructions and reporting templates for that year and any lead state insurance commissioner determinations, in consultation with the NAIC Financial Stability Task Force or its successor, provided within the framework.

(m) *Violations.* — The failure to file a registration statement, or any summary of the registration statement, or enterprise risk

filing required by this section within the time specified for such filing shall be a violation of this section.

§33-27-5. Standards; adequacy of surplus; dividends and other distributions; notice of amendments or modifications; management of domestic insurers subject to registration.

(a) Transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(1) The terms shall be fair and reasonable;

(2) Agreements for cost-sharing services and management shall include such provisions as required by rule;

(3) Charges or fees for services performed shall be reasonable;

(4) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(5) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties;

(6) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

(7) If an insurer subject to this article is deemed by the commissioner to be in a hazardous financial condition as defined by §33-34-3a of this code or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, then the commissioner may require the insurer to secure and maintain either a deposit, held by the commissioner, or a bond, as determined by the insurer at the insurer's discretion, for the protection of the insurer for the duration of the contract(s) or agreement(s), or the

existence of the condition for which the commissioner required the deposit or the bond.

In determining whether a deposit or a bond is required, the commissioner should consider whether concerns exist with respect to the affiliated person's ability to fulfill the contract(s) or agreement(s) if the insurer were to be put into liquidation. Once the insurer is deemed to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, and a deposit or bond is necessary, the commissioner has discretion to determine the amount of the deposit or bond, not to exceed the value of the contract(s) or agreement(s) in any one year, and whether such deposit or bond should be required for a single contract, multiple contracts, or a contract only with a specific person(s);

(8) All records and data of the insurer held by an affiliate are and remain the property of the insurer, are subject to control of the insurer, are identifiable, and are segregated or readily capable of segregation, at no additional cost to the insurer, from all other persons' records and data. This includes all records and data that are otherwise the property of the insurer, in whatever form maintained, including, but not limited to, claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records, or similar records within the possession, custody, or control of the affiliate. At the request of the insurer, the affiliate shall provide that the receiver can obtain a complete set of all records of any type that pertain to the insurer's business; obtain access to the operating systems on which the data is maintained; obtain the software that runs those systems either through assumption of licensing agreements or otherwise; and restrict the use of the data by the affiliate if it is not operating the insurer's business. The affiliate shall provide a waiver of any landlord lien or other encumbrance to give the insurer access to all records and data in the event of the affiliate's default under a lease or other agreement; and

(9) Premiums or other funds belonging to the insurer that are collected by or held by an affiliate are the exclusive property of the

insurer and are subject to the control of the insurer. Any right of offset in the event an insurer is placed into receivership shall be subject to §33-10-1 *et seq.* of this code.

(b) *Adequacy of surplus.* — For purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among the several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification, and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's investment portfolio;

(8) The surplus as regards policyholders maintained by other comparable insurers;

(9) The adequacy of the insurer's reserves; and

(10) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his or her judgment such investment so warrants.

(c) *Dividends and other distributions.* — (1) No domestic insurer may pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(A) Thirty days after the commissioner has received notice of the declaration thereof and has not within that period disapproved such payment; or

(B) The commissioner has approved that payment within the 30-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the lesser of:

(A) Ten percent of such insurer's surplus as regards policyholders as of December 31, next preceding; or

(B) The net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month period ending December 31, next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

(3) In determining whether a dividend or distribution is extraordinary for purposes of this subsection, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

(4) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval, and the declaration shall confer no rights upon shareholders until:

(A) The commissioner has approved the payment of such dividend or distribution; or

(B) The commissioner has not disapproved such payment within the 30-day period referred to above.

(d) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, that are subject to any materiality standards contained in subdivisions (1) through (7) of this subsection, may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least 30 days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period: *Provided*, That nothing contained in this subsection shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within 30 days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any.

(1) Sales, purchases, exchanges, loans, extensions of credit, or investments, provided such transactions are equal to or exceed:

(A) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or 25 percent of surplus as regards policyholders as of December 31, next preceding;

(B) With respect to life insurers, three percent of the insurer's admitted assets as of December 31, next preceding;

(2) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, purchase assets of, or to make

investments in, any affiliate of the insurer making such loans or extensions of credit provided the transactions are equal to or exceed:

(A) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or 25 percent of surplus as regards policyholders as of December 31, next preceding;

(B) With respect to life insurers, three percent of the insurer's admitted assets as of December 31, next preceding;

(3) Reinsurance agreements or modifications thereto, including:

(A) All reinsurance pooling agreements; and

(B) Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds five percent of the insurer's surplus as regards policyholders, as of December 31, next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(4) All management agreements, service contracts, tax allocation agreements, guarantees, and all cost-sharing arrangements;

(5) Guarantees when made by a domestic insurer: *Provided*, That a guarantee that is quantifiable as to amount is not subject to the notice requirements of this subsection unless it exceeds the lesser of one half of one percent of the insurer's admitted assets or 10 percent of surplus as regards policyholders as of December 31, next preceding: *Provided, however*, That all guarantees that are not quantifiable as to amount are subject to the notice requirements of this subsection;

(6) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to §33-27-2a of this code or authorized under any other section of this chapter, or in non-subsidiary insurance affiliates that are subject to the provisions of this article, are exempt from this requirement; and

(7) Any material transactions, specified by rule, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

(e) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that separate transactions were entered into over any 12-month period for that purpose, he or she may exercise his or her authority under §33-27-9 of this code.

(f) The commissioner, in reviewing transactions pursuant to subsection (d) of this section, shall consider whether the transactions comply with the standards set forth in subsection (a) of this section and whether they may adversely affect the interests of policyholders.

(g) The commissioner shall be notified within 30 days of any investment of the domestic insurer in any one corporation if the total investment in that corporation by the insurance holding company system exceeds 10 percent of such corporation's voting securities.

(h) *Management of domestic insurers subject to registration.* —

(1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so

as to assure its separate operating identity consistent with the provisions of this article.

(2) Nothing in this section precludes a domestic insurer from having or sharing a common management or cooperatively, or jointly using personnel, property, or services with one or more other persons under arrangements meeting the standards of subsection (a) of this section.

(3) Not less than one third of the directors of a domestic insurer, and not less than one third of the members of each committee of the board of directors of any domestic insurer, shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

(4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.

(5) The provisions of subdivisions (3) and (4) of this subsection do not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of such subdivisions with respect to such controlling entity.

(6) An insurer may make application to the commissioner for a waiver from the requirements of this subsection, if the insurer's

annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than \$300 million. An insurer may also make application to the commissioner for a waiver from the requirements of this subsection based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.

(i) *Supervision, seizure, conservatorship, or receivership proceedings.* — (1) Any affiliate that is party to an agreement or contract with a domestic insurer that is subject to §33-27-5(d)(4) of this code shall be subject to the jurisdiction of any supervision, seizure, conservatorship, or receivership proceedings against the insurer and to the authority of any supervisor, conservator, rehabilitator, or liquidator for the insurer appointed pursuant to §33-10-1 *et seq.* and §33-34-1 *et seq.* of this code for the purpose of interpreting, enforcing, and overseeing the affiliate's obligations under the agreement or contract to perform services for the insurer that:

(A) Are an integral part of the insurer's operations, including, but not limited to, management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment, or any other similar functions; or

(B) Are essential to the insurer's ability to fulfill its obligations under insurance policies.

(2) The commissioner may require that an agreement or contract pursuant to §33-27-5(d)(4) of this code for the provision of services described in §33-27-5(i)(1)(A) and §33-27-5(i)(1)(B) of this code specify that the affiliate consents to the jurisdiction as set forth in this subsection.

§33-27-6a. Supervisory colleges; power of commissioner; expenses; agreements.

(a) *Power of commissioner.* — With respect to any insurer registered under §33-27-4 of this code, and in accordance with subsection (c) of this section, the commissioner may participate in

a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this chapter. The powers of the commissioner with respect to supervisory colleges include, but are not limited to, the following:

- (1) Initiating the establishment of a supervisory college;
- (2) Clarifying the membership and participation of other supervisors in the supervisory college;
- (3) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
- (4) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and
- (5) Establishing a crisis management plan.

(b) *Expenses.* — Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with subsection (c) of this section, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of such expenses.

(c) *Supervisory college.* — In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and as part of the examination of individual insurers in accordance with §33-27-6 of this code, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal, and international regulatory agencies. The commissioner may enter into agreements in accordance with §33-27-7(c) of this code

providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college: *Provided*, That this section may not be construed as delegating to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

§33-27-7. Confidential treatment.

(a) Documents, materials or other information in the possession or control of the commissioner that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to §33-27-6 of this code and all information reported or provided to the commissioner pursuant to §33-27-3(b)(12), §33-27-3(b)(13), §33-27-4, §33-27-5, or §33-27-6b of this code is confidential by law and privileged, is exempt from disclosure pursuant to chapter 29B of this code, is not open to public inspection, is not subject to subpoena, is not subject to discovery or admissible in evidence in any criminal, private civil, or administrative action, and is not subject to production pursuant to court order: *Provided*, That the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The commissioner may not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in any manner as he or she may consider appropriate.

(1) For purposes of the information reported and provided to the commissioner pursuant to §33-27-4(1)(2) of this code, the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any United States group-wide supervisor.

(2) For purposes of the information reported and provided to the commissioner pursuant to §33-27-4(1)(3) of this code, the commissioner shall maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-United States group-wide supervisors.

(b) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner or with whom such documents, materials, or other information are shared pursuant to this article may be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (a) of this section.

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

(1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (a) of this section, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners (NAIC) and its affiliates and subsidiaries, with any third-party consultants designated by the commissioner, and with state, federal, and international law-enforcement authorities, including members of any supervisory college described in §33-27-6a of this code, if the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality;

(2) Notwithstanding subdivision (1) of this subsection, the commissioner may only share confidential and privileged documents, material, or information reported pursuant to §33-27-4(1)(1) of this code, with commissioners of states having statutes or regulations substantially similar to subsection (a) of this section and who have agreed in writing not to disclose such information;

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

(4) Shall enter into written agreements with the NAIC and any third-party consultant designated by the commissioner governing sharing and use of information provided pursuant to this article consistent with this subsection that shall:

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries or a third-party consultant designated by the commissioner pursuant to this article, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information, and has verified in writing the legal authority to maintain such confidentiality;

(B) Specify that ownership of information shared with the NAIC and its affiliates and subsidiaries or a third-party consultant designated by the commissioner pursuant to this article remains with the commissioner, and the NAIC's or third-party consultant's use of the information is subject to the direction of the commissioner;

(C) Excluding documents, material, or information reported pursuant to §33-27-4(1)(3) of this code, prohibit the NAIC or a third-party consultant designated by the commissioner from storing the information shared pursuant to this article in a permanent database after the underlying analysis is completed;

(D) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant designated by the commissioner pursuant to this article is subject to a request or subpoena to the NAIC or third-party consultant for disclosure or production;

(E) Require the NAIC and its affiliates and subsidiaries or a third-party consultant designated by the commissioner to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries or third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries or third-party consultant pursuant to this article; and

(F) For documents, material, or information reported pursuant to §33-27-4(l)(3) of this code, in the case of an agreement involving a third-party consultant designated by the commissioner, provide for notification of the identity of the consultant to the applicable insurers.

(d) The sharing of information by the commissioner pursuant to this article does not constitute a delegation of regulatory authority, and the commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this article.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information occurs as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (c) of this section.

(f) Documents, materials, or other information in the possession or control of the NAIC and its affiliates and subsidiaries or a third-party consultant designated by the commissioner pursuant to this article is confidential by law and privileged, is exempt from disclosure pursuant to chapter 29B of this code, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action.

(g) The group capital calculation and resulting group capital ratio required under §33-27-4(1)(2) of this code and the liquidity stress test along with its results and supporting disclosures required under §33-27-4(1)(3) of this code are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of this article, the making, publishing, disseminating, circulating, or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement, or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited: *Provided*, That if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

§33-27-8. Injunctions; prohibitions against voting securities; sequestration of voting securities.

(a) *Injunctions.* — Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed or is about to commit a violation of this article or of any rule, regulation, or order issued by the commissioner hereunder, the commissioner may apply to the circuit court for the county in which the principal officer of the insurer or, if the insurer has no office in this state, then to the circuit court of Kanawha County for an order enjoining such insurer or such director, officer, employee, or agent thereof from violating or continuing to violate this article or any such rule, regulation, or order, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

(b) *Voting of securities: when prohibited.* — No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this article or of any rule, regulation, or order issued by the commissioner hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this article or of any rule, regulation, or order issued by the commissioner hereunder, the insurer or the commissioner may apply to the circuit court for the county in which the insurer has its principle place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of §33-27-3 of this code, or any rule, regulation, or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

(c) *Sequestration of voting securities.* — In any case where a person has acquired or is proposing to acquire any voting securities in violation of this article or any rule, regulation, or order issued by the commissioner hereunder, the circuit court may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this article.

(d) Notwithstanding any other provisions of law, for the purposes of this article, the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

CHAPTER 154

(H. B. 3513 - By Delegates Akers and Maynor)

[Passed April 12, 2025; in effect August 1, 2025]

[Approved by the Governor on April 25, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto two new sections, designated §60-7-12b and §60-7-12c, relating to standards of liability and insurance requirements in certain civil actions; clarifying liability for injury, death, or damages caused by an owner, lessor or licensee of a private club; clarifying liability of intoxicated persons; clarifying liability of persons or licensees for knowingly unlawful sales; setting forth findings and purposes; setting forth standards of liability to bring cause of action for damages resulting from intoxication against an owner, lessor or licensee of a private club; setting forth a rebuttable presumption and exceptions to liability; creating certain insurance requirements; defining terms; and clarifying liability for owners or lessors of property for gross negligence.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-12b. Liability of intoxicated persons; liability of persons or licensees for knowingly unlawful sales; rebuttable presumptions and exceptions.

(a) Notwithstanding any other provision of this article to the contrary, a licensee or person acting on the licensee's behalf who sells, furnishes, or serves an alcoholic beverage to a person is not thereby liable in a civil action for damages for injury, death, or damage caused by or resulting from the impairment or intoxication of the person who was furnished the alcoholic beverage, including

injury or death to other individuals, unless either of the following circumstances apply:

(1) The licensee or person acting on the licensee's behalf knowingly sells, furnishes, or serves alcoholic beverages to a person who is not of lawful drinking age; or

(2) The licensee or person acting on the licensee's behalf knowingly sells, furnishes, or serves alcoholic beverages to a person who was visibly intoxicated at the time the alcoholic beverage was furnished.

(b) Where either of the circumstances set forth in §60-7-12b(a) of this code are met by a preponderance of the evidence, a person or licensee may become liable for injury or damage caused by or resulting from the intoxication of the person when the sale, furnishing, or serving of alcoholic beverages to the person is the proximate cause of the injury or damage.

(c) In determining whether the sale, furnishing, or serving of alcoholic beverages to a person not of legal drinking age is done knowingly, as provided in §60-7-12b(a)(1) of this code, a rebuttable presumption that the alcoholic beverages were not sold, furnished, or served knowingly exists if:

(1) The person selling, furnishing, or serving alcoholic beverages has installed a transaction scan device on its licensed premises and can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom alcoholic beverages have been furnished; or,

(2) The person selling, furnishing, or serving alcoholic beverages can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom an alcoholic beverage is sold by providing evidence:

(A) That it has developed a written policy which requires each employee, servant, or agent to verify the age of each individual to whom an alcoholic beverage will be sold, furnished, or given away;

(B) That it has communicated this policy to each employee, servant, or agent; and

(C) That it monitors the actions of its employees, servants, or agents regarding the sale, furnishing, or provision without charge of any alcoholic beverage and that it has taken corrective action for any discovered noncompliance with this policy.

(d) For purposes of this section, an intoxicated person of lawful drinking age operating a motor vehicle, an executor or administrator of the intoxicated motor vehicle operator's estate, any person voluntarily riding in a motor vehicle operated by a person known to be intoxicated, or an executor or administrator of any person voluntarily riding in a motor vehicle operated by a person known to be intoxicated, do not have a private cause of action against any licensee, person acting on the licensee's behalf, or owner or lessor of any building of a licensee, for injuries to his or her person or property arising from the actions of the intoxicated driver.

(e) For any cause of action brought pursuant to this section against a licensee or person acting on the licensee's behalf that maintains liquor liability insurance in an amount not less than \$1 million per occurrence and at least \$2 million in the aggregate, a verdict of past medical expenses is limited to \$1 million, and an award of punitive damages may not exceed two times the amount of compensatory damages awarded.

(f) For purposes of this section, these terms are defined as follows:

"Alcoholic beverage" includes alcohol, beer, including nonintoxicating beer and nonintoxicating craft beer, wine, spirits and any other liquid or solid capable of being used as a beverage.

"Knowing" or "knowingly" means knew or should have known under a totality of the circumstances.

"Transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver's license or other government-issued identity card.

“Visible intoxication” or “visibly intoxicated” means actual evidence of a person’s action or series of actions that present objective signs of intoxication. A person’s blood alcohol content or the number of alcoholic beverages a person consumes do not constitute prima facie evidence to establish that a person is visibly intoxicated within the meaning of this section but may be admissible as relevant evidence of the person’s intoxication.

(g) Notwithstanding any other effective date to the contrary, the amendments to this article, enacted during the 2025 regular legislative session, apply to all cases filed on or after August 1, 2025.

§60-7-12c. Liability of owners or lessors for gross negligence.

(a) A person, and an executor or administrator of the person’s estate, who suffers personal injury, death, or property damage as a result of the actions of an intoxicated person do not have a private cause of action against an owner or lessor who rents their building or premises to a licensee or person acting on the licensee’s behalf against whom a private cause of action may be brought under §60-7-12b of this code, except when:

(1) The owner and the licensee are the same person, and the licensee violated a provision of §60-7-12b of this code; or

(2) There is clear and convincing evidence that the owner or lessor acted willfully, wantonly, or with gross negligence with respect to the renting of the owner or lessor’s building or premises to a licensee or person acting on a licensee’s behalf against whom a private cause of action has been brought.

(b) For any cause of action brought under this section in which the trier of fact has determined that punitive damages are to be awarded, the limitations on punitive damages provided in §55-7-29 of this code apply.

(c) Notwithstanding any other effective date to the contrary, the amendments to this article, enacted during the 2025 regular legislative session, apply to all cases filed on or after August 1, 2025.

CHAPTER 155

**(Com. Sub. for S. B. 627 - By Senators Jeffries, Clements,
Helton, Rose, and Tarr)**

[Passed April 9, 2025; in effect 90 days from passage (July 8, 2025)]
[Approved by the Governor on April 24, 2025.]

AN ACT to amend and reenact §20-1-22 of the Code of West Virginia, 1931, as amended, relating to removing the prohibition against leasing state-owned pore spaces underlying lands designated as state parks; prohibiting any disturbance of the surface of state park property for any drilling or injection activity; requiring that the proceeds from any leased state-owned pore spaces underlying state forests, state parks, natural and scenic areas, wildlife management areas, and other lands under the jurisdiction and control of the director be used exclusively where the leased pore space is located; and requiring that the center of any well pad leased for pore space underlying state parks may not be located within 200 feet of a state park boundary, provided, that the Secretary of the Department of Commerce, in consultation with the Director of the Division of Natural Resources, may waive the setback requirement after considering the impact of the lessee's proposed well-site location on viewshed, noise, and other possible impediments to the public use and enjoyment of the state park property.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-22. Authorizing the director to lease and develop pore spaces.

(a) The director may, with the approval in writing of the Secretary of Commerce, lease state-owned pore spaces underlying state forests, natural and scenic areas, wildlife management areas, and other lands under the jurisdiction and control of the director for underground carbon sequestration: *Provided*, That the director may not permit the disturbance of the surface of state park property for any drilling or injection activity. Before entering into a lease, the director shall receive sealed bids therefor, after notice by publication as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be each county in which the affected lands are located, and on the division's main website for a period of at least 14 days prior to entering into any lease pursuant to this section. The pore space development proposal so advertised shall be leased to the highest responsible bidder, who shall give bond for the proper performance of the lease as the director shall designate; but the director may reject any and all bids and re-advertise for bids. The development of pore spaces pursuant to this section shall be consistent with the requirements of §22-11B-1 *et seq.* of this code. The proceeds arising from any such lease shall be paid to the Treasurer of the State of West Virginia and shall be credited to the division and used exclusively for improvements and maintenance in the state forests, state parks, natural and scenic areas, wildlife management areas, and other lands under the jurisdiction and control of the director where the leased pore space is located.

(b) Notwithstanding the competitive bidding process established in subsection (a) of this section, the director may, with the approval in writing of the Secretary of the Department of Commerce, directly award a pore space lease when the Secretary of the Department of Commerce and the Secretary of the Department of Economic Development certifies in writing to the director that the lease is a necessary component of an economic development project: *Provided*, That the lease shall afford a market value or greater royalty.

(c) The center of any well pad leased in accordance with subsection (a) of this section for pore space underlying state parks may not be located within 200 feet of a state park boundary:

Provided, That the Secretary of the Department of Commerce, in consultation with the Director of the Division of Natural Resources, may waive this requirement after considering the impact of the lessee's proposed well-site location on viewshed, noise, and other possible impediments to the public use and enjoyment of the state park property.

CHAPTER 156

**(Com. Sub. for S. B. 35 - By Senators Oliverio, Woelfel,
Takubo, and Hamilton)**

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]

[Approved by the Governor on April 24, 2025.]

AN ACT to amend and reenact §8-22A-2, §16-5V-2, §18B-4-5, and §18B-7-5 of the Code of West Virginia, 1931, as amended; and to amend the code by adding a new section, designated §16-5V-6f, relating to retirement of certain law-enforcement officers; amending definitions; providing definition for bona fide separation from service upon retirement; allowing campus police officers hired before January 1, 2026, to participate in the Municipal Police and Firefighters Retirement System under certain conditions; mandating newly hired campus police officers to participate in the Municipal Police and Firefighters Retirement System beginning on January 1, 2026; authorizing home confinement officers to participate in the Emergency Medical Services Retirement System; requiring newly hired home confinement officers to participate in the Emergency Medical Services Retirement System beginning on January 1, 2025; and providing for home confinement officers to transfer from the Public Employees Retirement System to the Emergency Medical Services Retirement System.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

***§8-22A-2. Definitions.**

***Note:** This section was also amended by H. B. 2053 (Chapter 177), which passed prior to this Act and S. B. 712 (Chapter 199), which passed subsequent to this Act.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member 2.75 percent per year of the member's final average salary for the first 20 years of credited service. Additionally, 2 percent per year for 21 through 25 years and 1.5 percent per year for each year over 25 years will be credited with a maximum benefit of 90 percent of a member's final average salary. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §8-22A-10 of this code.

(b) "Accumulated contributions" means the sum of all retirement contributions deducted from the compensation of a member or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

(c) "Active military duty" means full-time duty in the active military service of the United States Army, Navy, Air Force, Space Force, Coast Guard, or Marine Corps. The term does not include regularly required training or other duty performed by a member of a reserve component or National Guard unless the member can substantiate that he or she was called into the full-time active military service of the United States and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) "Actuarial equivalent" means a benefit of equal value computed on the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined

without regard to any rules that limit the remuneration included in wages based on the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits, or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost-of-living in accordance with §5-10D-7 of this code and Section 401(a) (17) of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the month for which an annuity is payable after submission of a retirement application or the required beginning date, if earlier. For purposes of this subsection, if retirement income payments commence after the normal retirement age, "retirement" means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member's normal retirement age and after completing proper written application for retirement on an application supplied by the board.

(h) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

(i) "Board" means the Consolidated Public Retirement Board.

(j) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with any participating public employer in the plan for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with a participating public employer. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis.

(k) "Covered employment" means: (1) Employment as a full-time municipal police officer or firefighter and the active performance of the duties required of that employment; or (2) - employment as a full-time campus police officer as described in §18B-4-5 of this code and the active performance of the duties required of that employment; or (3) the period of time during which active duties are not performed but disability benefits are received under this article; or (4) concurrent employment by a municipal police officer or firefighter or a campus police officer in a job or jobs in addition to his or her employment as a municipal police officer or firefighter or a campus police officer in this plan where the secondary employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That the police officer or firefighter contributes to the fund created in this article the amount specified as the member's contribution in §8-22A-8 of this code.

(l) "Credited service" means the sum of a member's years of service, active military duty, and disability service.

(m) "Dependent child" means: (1) An unmarried person under age 18 who is: (A) A natural child of the member; (B) a legally adopted child of the member; (C) a child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or (D) a stepchild of the member residing in the member's household at the time of the member's death; or (2) Any unmarried child under age 23: (A) Who is enrolled as a full-time student in an accredited college or university; (B) who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and (C) whose relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of this subsection.

(n) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(o) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof, or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(p) "Effective date" means January 1, 2010.

(q) "Employer error" means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(r) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then "final average salary" means the average of the monthly compensation which the member was receiving in the plan year prior to the initial disability. "Final average salary" does not include any lump sum payment for unused, accrued leave of any kind or character.

(s) "Full-time employment" means permanent employment of an employee by a participating public employer in a position which normally requires 12 months per year service and requires at least 1,040 hours per year service in that position.

(t) "Fund" means the West Virginia Municipal Police Officers and Firefighters Retirement Fund created by this article.

(u) "Hour of service" means: (1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are

performed; and (2) each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member may not be credited with any hours of service for any period of time he or she is receiving benefits under §8-22A-17 and §8-22A-18 of this code; and (3) each hour for which back pay is either awarded or agreed to be paid by the participating public employer, irrespective of mitigation of damages. The same hours of service may not be credited both under subdivision (1) or (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(v) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

(w) "Member" means, except as provided in §8-22A-32 §8-22A-33, or §8-22A-33a of this code, a person hired as a municipal police officer or municipal firefighter, as defined in this section, by a participating public employer on or after January 1, 2010, or a campus police officer as described in §18B-4-5 of this code who is hired after January 1, 2026, or who was hired before that date but elects to become a member as described in that section. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(x) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

(y) "Municipality" has the meaning ascribed to it in this code.

(z) (1) "Municipal police officer" means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal policemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal policemen's pension and relief fund as provided in §8-22-16 of this code: *Provided*, That municipal police officer also means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to §8-22A-33 or §8-22A-33a of this code. Paid police department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(2) "Municipal firefighter" means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal firemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal firemen's pension and relief fund as provided in §8-22-16 of this code: *Provided*, That municipal firefighter also means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to §8-22A-33 or §8-22A-33a of this code. Paid fire department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(aa) "Municipal subdivision" means any separate corporation or instrumentality established by one or more municipalities, as permitted by law; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more municipalities.

(bb) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary

shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(cc) "Normal retirement age" means the first to occur of the following: (1) Attainment of age 50 years and the completion of 20 or more years of regular contributory service; (2) while still in covered employment, attainment of at least age 50 years and when the sum of current age plus regular contributory service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years and completion of 10 years of regular contributory service; or (4) attainment of age 62 years and completion of five or more years of regular contributory service.

(dd) "Participating public employer" means a municipality, municipal subdivision participating in the plan or an institution of higher education.

(ee) "Plan" means the West Virginia Municipal Police Officers and Firefighters Retirement System established by this article.

(ff) "Plan year" means the 12-month period commencing on January 1 of any designated year and ending the following December 31.

(gg) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, firefighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t) (10) (B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b) (2) (v) as they may be amended from time to time.

(hh) "Regular contributory service" means a member's credited service excluding active military duty, disability service and accrued annual and sick leave service.

(ii) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(jj) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains (1) the calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; *Provided*, That the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

(kk) "Retirant" means any member who commences an annuity payable by the plan.

(ll) "Retirement income payments" means the monthly retirement income payments payable.

(mm) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(nn) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(oo) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subsection: (1) A member is totally disabled only if his or her

physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration; and (2) "physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.

(pp) "Vested" means eligible for retirement income payments after completion of five or more years of regular contributory service.

(qq) "Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based on the hours of service performed as covered employment and credited to the member during the plan year based on the following schedule:

Hours of Service	Year of Service Credited
Less than 500	0
500 to 999	1/3
1,000 to 1,499	2/3
1,500 or more	1

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were

received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §8-22A-17 and §8-22A-18 of this code.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member two and six-tenths percent per year of the member's final average salary for the first 20 years of credited service. Additionally, two percent per year for 21 through 25 years and one and one-half percent per year for each year over 25 years will be credited with a maximum benefit of 67 percent. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §16-5V-12 of this code.

(1) The board may, upon the recommendation of the board's actuary, increase the employees' contribution rate to 10 and five-tenths percent should the funding of the plan not reach 70 percent funded by July 1, 2012. The board shall decrease the contribution rate to eight and one-half percent once the plan funding reaches the 70 percent support objective as of any later actuarial valuation date.

(2) Upon reaching the 75 percent actuarial funded level, as of an actuarial valuation date, the board shall increase the two and six-tenths percent to two and three-quarter percent for the first 20 years of credited service. The maximum benefit will also be increased from 67 percent to 90 percent.

(3) For 911 personnel or home confinement officers with assets transferred pursuant to §16-5V-6d or §16-5V-6f of this code who did not elect to pay back higher past contributions with interest, "accrued benefit" means, on behalf of the member, two percent per year of the member's final average salary for all credited service

that was credited as a result of transferred assets. Additionally, two and three-quarter percent for the first 20 years of new credited service earned from date of membership in this plan will be credited. Additionally, two percent per year for 21 through 25 years of new credited service earned from date of membership in this plan and one and one-half percent per year for each year over 25 years earned from date of membership in this plan will be credited. A maximum benefit of 90 percent of a member's final average salary may be paid. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §16-5V-12 of this code.

(4) For 911 personnel or home confinement officers with assets transferred pursuant to §16-5V-6d or §16-5V-6f of this code who did elect to pay back higher past contributions, with interest, for eligible 911 service credit, "accrued benefit" means on behalf of the member two percent per year of the member's final average salary for all non-911 credited service that was credited as a result of transferred assets. Additionally, two and three-quarter percent for the first 20 years of 911 credited service will be credited. Additionally, two percent per year for 21 through 25 years of 911 credited service and one and one-half percent per year for each year over 25 years of 911 credited service will be credited. A maximum benefit of 90 percent of a member's final average salary may be paid. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §16-5V-12 of this code.

(b) "Accumulated contributions" means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

(c) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article.

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the month for which an annuity is payable after submission of a retirement application. For purposes of this subsection, if retirement income payments commence after the normal retirement age, "retirement" means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member's normal retirement age and after completing proper written application for retirement on an application supplied by the board.

(h) "Board" means the Consolidated Public Retirement Board.

(i) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with any participating public employer in the system for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with a participating employer. For purposes of this definition, an employment relationship includes employment in

any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary, or leased employee basis.

(j) "Contributing service" or "contributory service" means service rendered by a member while employed by a participating public employer for which the member made contributions to the plan. Contributory service that was transferred in full from the Public Employees Retirement System will qualify as contributory service in this plan.

(k) "County commission or political subdivision" has the meaning ascribed to it in this code.

(l) "County firefighter" means an individual employed in full-time employment as a firefighter with a county commission.

(m) "Covered employment" means: (1) Employment as a full-time emergency medical technician, emergency medical technician/paramedic, or emergency medical services/registered nurse, and the active performance of the duties required of emergency medical services officers; or (2) employment as a full-time employee of a county 911 public safety answering point; or (3) employment as a full-time county home confinement officer; or (4) employment as a full-time county firefighter; or (5) the period of time during which active duties are not performed but disability benefits are received under this article; or (6) concurrent employment by an emergency medical services officer, 911 personnel, home confinement officer, or county firefighter in a job or jobs in addition to his or her employment as an emergency medical services officer, 911 personnel, home confinement officer, or county firefighter where the secondary employment requires the emergency medical services officer, 911 personnel, home confinement officer, or county firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That the emergency medical services officer, 911 personnel, home confinement officer, or county firefighter contributes to the fund created in this article the amount specified as the member's contribution in §16-5V-8 of this code.

(n) "Credited service" means the sum of a member's years of service, active military duty, disability service, service transferred from the Public Employees Retirement System and accrued annual and sick leave service.

(o) "Dependent child" means either:

(1) An unmarried person under age eighteen who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age 23:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in paragraph (A), (B), or (C), subdivision (1) of this subsection.

(p) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(q) "Disability service" means service received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(r) "Early retirement age" means age 45 or over and completion of 20 years of contributory service.

(s) "Effective date" means January 1, 2008.

(t) "Emergency medical services officer" means an individual employed by the state, county or other political subdivision as a medical professional who is qualified to respond to medical emergencies, aids the sick and injured and arranges or transports to medical facilities, as defined by the West Virginia Office of Emergency Medical Services. This definition is construed to include employed ambulance providers and other services such as law enforcement, rescue, or fire department personnel who primarily perform these functions and are not provided any other credited service benefits or retirement plans. These persons may hold the rank of emergency medical technician/basic, emergency medical technician/paramedic, emergency medical services/registered nurse, or others as defined by the West Virginia Office of Emergency Medical Services and the Consolidated Public Retirement Board.

(u) "Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, the West Virginia Code of State Rules, or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(v) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then "final average salary" means the average of the monthly salary determined paid to the member during that period as determined under §16-5V-19 of this code multiplied by 12. Final average salary does not include any lump sum payment for unused, accrued leave of any kind or character.

(w) "Full-time employment" means permanent employment of an employee by a participating public employer in a position which normally requires 12 months per year service and requires at least 1,040 hours per year service in that position.

(x) "Fund" means the West Virginia Emergency Medical Services Retirement Fund created by this article.

(y) "Home confinement officer" means an individual employed in full-time employment as a home confinement officer or home incarceration supervisor with a county sheriff's office or by a county commission and who is certified pursuant to the provisions of §30-29-1 *et seq.* of this code.

(z) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year, but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §16-5V-19 or §16-5V-20 of this code; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission or political subdivision, irrespective of mitigation of damages. The same hours of service shall not be credited both under subdivision (1) or subdivision (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement, or payment is made.

(aa) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

(bb) "Member" means either: (1) A person first hired as an emergency medical services officer by an employer which is a participating public employer of the Emergency Medical Services Retirement System after the effective date of this article, as defined in subsection (s) of this section; or (2) an emergency medical services officer of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to the effective date and who elects to become a member pursuant to this article; or (3) a person first hired by a county 911 public safety answering center after the participating public employer elects to participate in the Emergency Medical Services Retirement System; or (4) a home confinement officer hired on or after July 1, 2025, employed by a participating public employer and who is not participating in the Deputy Sheriffs Retirement System; or (5) a home confinement officer who elects to participate pursuant to §16-5V-6f of this code and who is employed by a participating public employer; or (6) a county firefighter hired on or after June 10, 2022; or (7) a county firefighter of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to June 10, 2022, and who elects to become a member pursuant to §16-5V-6a of this code; or (8) a person first hired by a county 911 public safety answering center prior to July 1, 2022, and who elects to become a member pursuant to §16-5V-6c of this code. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(cc) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

(dd) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum

of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(ee) "Normal retirement age" means the first to occur of the following:

(1) Attainment of age 50 years and the completion of 20 or more years of regular contributory service, excluding active military duty, disability service, and accrued annual and sick leave service;

(2) While still in covered employment, attainment of at least age 50 years and when the sum of current age plus regular contributory years of service equals or exceeds 70 years;

(3) While still in covered employment, attainment of at least age 60 years and completion of 10 years of regular contributory service; or

(4) Attainment of age 62 years and completion of five or more years of regular contributory service.

(ff) "Participating public employer" means: (1) Any county commission, political subdivision, or county 911 public safety answering point in the state which has elected to cover its emergency medical services officers or 911 personnel, as defined in this article, under the West Virginia Emergency Medical Services Retirement System; or (2) any county sheriff's office or county commission who employs full-time home confinement officers; or (3) any county commission who employs county firefighters or full-time home confinement officers.

(gg) "Plan" means the West Virginia Emergency Medical Services Retirement System established by this article.

(hh) "Plan year" means the 12-month period commencing on January 1 of any designated year and ending the following December 31.

(ii) "Political subdivision" means a county, city, or town in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns: *Provided*, That any public corporation established under §7-15-4 of this code is considered a political subdivision solely for the purposes of this article.

(jj) "Public Employees Retirement System" means the West Virginia Public Employees Retirement System created by West Virginia Code.

(kk) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(ll) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

(mm) "Retirant" means any member who commences an annuity payable by the plan.

(nn) "Retire" or "retirement" means a member's withdrawal from the employ of a participating public employer and the commencement of an annuity by the plan.

(oo) "Retirement income payments" means the monthly retirement income payments payable under the plan.

(pp) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(qq) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(rr) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

For purposes of this subsection:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as an emergency medical services officer, 911 personnel, home confinement officer, or county firefighter but also cannot, considering his or her age, education, and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological, or psychological abnormality that is demonstrated by medically accepted clinical

and laboratory diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.

(ss) "Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

Hours of Service	Years of Service Credited
Less than 500	0
500 to 999	1/3
1000 to 1499	2/3
1500 or more	1

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §16-5V-19 or §16-5V-20 of this code. Except as specifically excluded, years of service include covered employment prior to the effective date.

Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to §16-5V-18 of this code or §5-10-30 of this code shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section §16-5V-18 of this code or has, prior to the effective date, made the repayment pursuant to §5-10-18 of this code.

(tt) "911 personnel" means an individual employed in full-time employment with a county 911 public safety answering point.

§16-5V-6f. Home confinement officers as members of the system. Transfer of home confinement officers assets from Public Employees Retirement System.

(a) Notwithstanding any other provision of this article to the contrary, any home confinement officer hired on or after July 1, 2025, shall be a member of this retirement plan as a condition of employment and upon membership does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment: *Provided*, That any home confinement officer who has concurrent employment in an additional job or jobs which would require the home confinement officer to be a member of any other retirement system administered by the board shall participate in only one retirement system administered by the board and the retirement system applicable to the concurrent employment for which the home confinement officer has the earliest date of hire shall prevail. Notwithstanding any other provision of this article to the contrary, a person employed as a home confinement officer by a participating public employer may be a member of this retirement plan subject to the provisions of this section. Full-time employment as a home confinement officer employed by a sheriff's office or county commission which is a participating public employer satisfies the definition of "covered employment" as defined in this article.

(b) Any home confinement officer who elects to become a member of the plan does not qualify for active membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment: *Provided*, That any home confinement officer who has concurrent employment in an additional job or jobs which would require the home confinement officer to be an active member of the West Virginia Deputy Sheriffs Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement System, or the West Virginia Natural Resources Police Officer Retirement System shall actively participate in only one retirement system administered by the

board, and the retirement system applicable to the concurrent employment for which the employee has the earliest date of hire shall prevail. Any home confinement officer shall continue to receive his or her accrued benefit of other retirement systems administered by the board, except in the case of Public Employees Retirement System, when credit and assets are transferred to the Emergency Services Retirement System.

(c) Any home confinement officer who was employed as a home confinement officer prior to July 1, 2025, but was not employed on July 1, 2025, shall become a member upon rehire as a home confinement officer. For purposes of this section, the member's years of service and credited service prior to July 1, 2025, may be counted so long as the home confinement officer has not received the return of his or her accumulated contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code. The member may request in writing to have his or her accumulated contributions and employer contributions from covered employment in the Public Employees Retirement System transferred to the plan and will receive two percent of the member's final average salary for each year transferred. If the conditions of this subsection are met, all years of the home confinement officer's covered employment shall be counted as years of service for the purposes of this article.

(d) Any home confinement officer employed in covered employment on July 1, 2025, shall elect in writing on a form provided by the board whether or not to transfer into this plan on or before August 29, 2025. Any home confinement officer who has elected to transfer into this plan shall be given credited service at the time of transfer for all credited service then standing to the home confinement officer's service credit in the Public Employees Retirement System regardless of whether the credited service, as defined in §5-10-2 of this code, was earned as a home confinement officer. All credited service standing to the transferring home confinement officer's credit in the Public Employees Retirement System at the time of transfer into this plan shall be transferred into the plan created by this article, and the transferring home confinement officer shall be given the same credit for the purposes

of this article for all service transferred from the Public Employees Retirement System as that transferring home confinement officer would have received from the Public Employees Retirement System as if the transfer had not occurred but with accrued benefit multipliers subject to the provisions of §16-5V-12 of this code. In connection with each transferring home confinement officer receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in this article: *Provided*, That any member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to this section may not, after having transferred into and becoming an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods in which the member was not in covered employment as a home confinement officer and which service was withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(e) Once made, the election made under this section is irrevocable. All home confinement officers electing to become members as described in this section, shall be members as a condition of employment and shall make the contributions required by this article.

(f) The Consolidated Public Retirement Board shall transfer assets of home confinement officers who wish to participate in the Emergency Medical Services Retirement Act from the Public Employees Retirement System Trust Fund into the West Virginia Emergency Medical Services Trust Fund no later than March 31, 2026.

(g) The amount of assets to be transferred for each transferring home confinement officer shall be computed using the July 1, 2025, actuarial valuation of the Public Employees Retirement System, and updated with 7.25 percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring home confinement officer in the Public Employees Retirement System shall be determined as of the end of the month

preceding the actual transfer. To determine the computation of the asset share to be transferred, the board shall:

(1) Compute the market value of the Public Employees Retirement System assets as of July 1, 2025, actuarial valuation date under the actuarial valuation approved by the board;

(2) Compute the actuarial accrued liabilities for all Public Employees Retirement System retirees, beneficiaries, disabled retirees, and terminated inactive members as of July 1, 2025, actuarial valuation date;

(3) Compute the market value of active member assets in the Public Employees Retirement System as of July 1, 2025, by reducing the assets value under subdivision (1) of this subsection by the inactive liabilities under subdivision (2) of this subsection;

(4) Compute the actuarial accrued liability for all active Public Employees Retirement System members as of July 1, 2025, actuarial valuation date approved by the board;

(5) Compute the funded percentage of the active members' actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2025, by dividing the active members' market value of assets under subdivision (3) of this subsection by the active members' actuarial accrued liabilities under subdivision (4) of this subsection;

(6) Compute the actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2025, for active home confinement officers transferring to the Emergency Medical Services Retirement System;

(7) Determine the assets to be transferred from the Public Employees Retirement System to the Emergency Medical Services Retirement System by multiplying the active members' funded percentage determined under subdivision (5) of this subsection by the transferring active members' actuarial accrued liabilities under the Public Employees Retirement System under subdivision (6) of this subsection and adjusting the asset transfer amount by interest at 7.25 percent for the period from the calculation date of July 1,

2025, through the first day of the month in which the asset transfer is to be completed.

(h) Once a home confinement officer has elected to transfer from the Public Employees Retirement System, transfer of that amount as calculated in accordance with the provisions of subsection (g) of this section by the Public Employees Retirement System shall operate as a complete bar to any further liability to the Public Employees Retirement System and constitutes an agreement whereby the transferring home confinement officer forever indemnifies and holds harmless the Public Employees Retirement System from providing him or her any form of retirement benefit whatsoever until that emergency medical services officer obtains other employment which would make him or her eligible to reenter the Public Employees Retirement System with no credit whatsoever for the amounts transferred to the Emergency Medical Services Retirement System.

(i) A home confinement officer who timely elected to transfer into this plan may request in writing that the Consolidated Public Retirement Board compute a quote of the amount owed for the member's transferred home confinement officer to be eligible for the 2.75 percent multiplier. The quote shall be provided to the member within 60 days of the board's receipt of the written request and the employer's verification of home confinement officer. Other Public Employees Retirement System employment is eligible for transfer, but only at the 2 percent multiplier. To determine the computation of the quote provided, the board shall:

(1) Compute the contributions made by each home confinement officer for eligible years under Public Employees Retirement System.

(2) Compute the contributions that would have been required under Emergency Medical Services Retirement System for eligible years.

(3) Compute the difference with interest at 7.25 percent that each home confinement officer would have been required to pay

had he or she originally participated in Emergency Medical Services Retirement System for eligible years.

(4) Full reinstatement amount must be repaid no later than December 31, 2030, or prior to the member's effective retirement date, whichever occurs first.

(j) Commencement of retirement for transferring home confinement officers may occur on or after April 1, 2026.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-5. Campus police officers; appointment; qualifications; authority; compensation and removal; law enforcement grants; pension plan.

(a) The governing boards may appoint qualified individuals to serve as campus police officers upon any premises owned or leased by the State of West Virginia and under the jurisdiction of the governing boards, subject to the conditions and restrictions established in this section.

(1) A person who previously was qualified for employment as a law-enforcement officer for an agency or political subdivision of any state is considered qualified for appointment as a campus police officer.

(2) Before performing duties as a campus police officer in any county, a person shall qualify as is required of county police officers by:

(A) Taking and filing an oath of office as required by §6-1-1 *et seq.* of this code; and

(B) Posting an official bond as required by §6-2-1 *et seq.* of this code.

(b) A campus police officer may carry a gun and any other dangerous weapon while on duty if the officer fulfills the certification requirement for law-enforcement officers under §30-

29-5 of this code or meets the requirements of subsection (a) of this section.

(c) A campus police officer shall preserve law and order on:

(1) The premises under the jurisdiction of the governing board;
and

(2) Any street, road, or thoroughfare, except controlled access and open country highways, immediately adjacent to or passing through premises, to which the officer is assigned by the president of the institution.

(A) For the purpose of this subdivision, the campus police officer is a law-enforcement officer pursuant to the provisions of §30-29-1 *et seq.* of this code;

(B) The officer has and may exercise all the powers and authority of a law-enforcement officer as to offenses committed within the area assigned;

(C) The officer is subject to all the requirements and responsibilities of a law-enforcement officer;

(D) Authority assigned pursuant to this subdivision does not supersede in any way the authority or duty of other law-enforcement officers to preserve law and order on these premises;

(E) Campus police officers may assist a local law-enforcement agency on public highways. The assistance may be provided to control traffic in and around premises owned by the state when:

(i) Traffic is generated as a result of athletic or other activities conducted or sponsored by the institution; and

(ii) The assistance has been requested by the local law-enforcement agency; and

(F) Campus police officers may assist a local law-enforcement agency in any location under the agency's jurisdiction at the request of the agency.

(d) The salary of a campus police officer is paid by the employing governing board. A state institution may furnish each campus police officer with a firearm and an official uniform to be worn while on duty. The institution shall furnish and require each officer while on duty to wear a shield with an appropriate inscription and to carry credentials certifying the person's identity and authority as a campus police officer.

(e) A governing board may at its pleasure revoke the authority of any campus police officer and such officers serve at the will and pleasure of the governing board. The president of the state institution shall report the termination of employment of a campus police officer by filing a notice to that effect in the office of the clerk of each county in which the campus police officer's oath of office was filed.

(f) Notwithstanding any other provisions of this code to the contrary, and for purposes of enhancing the ability of campus police officers to perform their duties, a governing board may apply for and receive any public or private grant or other financial award that is available to other law-enforcement agencies in the state.

(g) Current campus police officers may choose to participate in the Deputy Sheriffs Retirement System, to be administered by the Consolidated Public Retirement Board. Should the current campus police officer choose to participate in the Deputy Sheriffs Retirement System, no service credit or dollars accrued may be moved to that system.

(h) Effective January 1, 2026, all newly hired campus police officers shall participate in the Deputy Sheriffs Retirement System.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-5. Campus police officers; appointment; qualifications; authority; compensation and removal; law enforcement grants; pension plan.

(a) The governing boards may appoint qualified individuals to serve as campus police officers upon any premises owned or leased by the State of West Virginia and under the jurisdiction of the governing boards, subject to the conditions and restrictions established in this section.

(1) A person who previously was qualified for employment as a law-enforcement officer for an agency or political subdivision of any state is considered qualified for appointment as a campus police officer.

(2) Before performing duties as a campus police officer in any county, a person shall qualify as is required of county police officers by:

(A) Taking and filing an oath of office as required by §6-1-1 *et seq.* of this code; and

(B) Posting an official bond as required by §6-2-1 *et seq.* of this code.

(b) A campus police officer may carry a gun and any other dangerous weapon while on duty if the officer fulfills the certification requirement for law-enforcement officers under §30-29-5 of this code or meets the requirements of subsection (a) of this section.

(c) A campus police officer shall preserve law and order on:

(1) The premises under the jurisdiction of the governing board; and

(2) Any street, road, or thoroughfare, except controlled access and open country highways, immediately adjacent to or passing through premises, to which the officer is assigned by the president of the institution.

(A) For the purpose of this subdivision, the campus police officer is a law-enforcement officer pursuant to the provisions of §30-29-1 *et seq.* of this code;

(B) The officer has and may exercise all the powers and authority of a law-enforcement officer as to offenses committed within the area assigned;

(C) The officer is subject to all the requirements and responsibilities of a law-enforcement officer;

(D) Authority assigned pursuant to this subdivision does not supersede in any way the authority or duty of other law-enforcement officers to preserve law and order on these premises;

(E) Campus police officers may assist a local law-enforcement agency on public highways. The assistance may be provided to control traffic in and around premises owned by the state when:

(i) Traffic is generated as a result of athletic or other activities conducted or sponsored by the institution; and

(ii) The assistance has been requested by the local law-enforcement agency; and

(F) Campus police officers may assist a local law-enforcement agency in any location under the agency's jurisdiction at the request of the agency.

(d) The salary of a campus police officer is paid by the employing governing board. A state institution may furnish each campus police officer with a firearm and an official uniform to be worn while on duty. The institution shall furnish and require each officer while on duty to wear a shield with an appropriate inscription and to carry credentials certifying the person's identity and authority as a campus police officer.

(e) A governing board may at its pleasure revoke the authority of any campus police officer and such officers serve at the will and pleasure of the governing board. The president of the state institution shall report the termination of employment of a campus police officer by filing a notice to that effect in the office of the clerk of each county in which the campus police officer's oath of office was filed.

(f) Notwithstanding any other provisions of this code to the contrary, and for purposes of enhancing the ability of campus police officers to perform their duties, a governing board may apply for and receive any public or private grant or other financial award that is available to other law-enforcement agencies in the state.

(g) Campus police officers hired before January 1, 2026, may elect to participate in the Municipal Police and Firefighters Retirement System administered by the West Virginia Consolidated Public Retirement Board: *Provided*, That no campus police officer participating in the Municipal Police and Firefighters Retirement System may move any service credit or dollars previously accrued from any other retirement plan into the Municipal Police and Firefighters Retirement System: *Provided, however*, That no campus police officer participating in the Municipal Police and Firefighter Retirement System may participate in any other retirement system or plan offered by the campus police officer's employer: *Provided further*, That campus police officers hired before January 1, 2026, must inform the West Virginia Consolidated Public Retirement Board in writing of their choice to become a member of the Municipal Police and Firefighters Retirement System to begin membership: *And provided further*, That any campus police officer hired before January 1, 2026, who does not choose to become a member of the Municipal Police and Firefighter Retirement System must inform the West Virginia Consolidated Public Retirement Board in writing of their decision not to participate on or before December 31, 2025, and may not choose to participate in the Municipal Police and Firefighter Retirement System after that date.

(h) All campus police officers hired on or after January 1, 2026, shall participate in the Municipal Police and Firefighters Retirement System.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-5. Supplemental and additional retirement plans for employees; payroll deductions; authority to match

employee contributions; retroactive curative and technical corrective action.

(a) Any reference in this code to the "additional retirement plan" relating to state higher education employees, means the "Higher Education Retirement Plan" provided in this section. Any state higher education employee participating in a retirement plan upon the effective date of this section continues to participate in that plan and may not elect to participate in any other state retirement plan. Any retirement plan continues to be governed by the provisions of law applicable on the effective date of this section.

(b) The commission, on behalf of the council, governing boards and itself, shall contract for a retirement plan for their employees, to be known as the Higher Education Retirement Plan. The commission, council and governing boards shall make periodic deductions from the salary payments due employees in the amount they are required to contribute to the Higher Education Retirement Plan, which deductions shall be six percent.

(c) The commission, council and governing boards may contract for supplemental retirement plans for any or all of their employees to supplement the benefits employees otherwise receive. The commission, council and governing boards may make additional periodic deductions from the salary payments due the employees in the amount they are required to contribute for the supplemental retirement plan.

(d) An organization, by way of additional compensation to their employees, shall pay an amount, which, at a minimum, equals the contributions of the employees into the Higher Education Retirement Plan from funds appropriated to the commission, council, or governing board for personal services.

(e) As part of an overall compensation plan, the commission, council or a governing board, each at its sole discretion, may increase its contributions to any employee retirement plan to an amount that exceeds the contributions of employees.

(f) Each participating employee has a full and immediate vested interest in the retirement and death benefits accrued from all the moneys paid into the Higher Education Retirement Plan or a supplemental retirement plan for his or her benefit. Upon proper requisition of a governing board, the commission, or council, the Auditor periodically shall issue a warrant, payable as specified in the requisition, for the total contributions so withheld from the salaries of all participating employees and for the matching funds of the commission, council or governing board.

(g) Any person whose employment commences on or after July 1, 1991, and who is eligible to participate in the Higher Education Retirement Plan, shall participate in that plan and is not eligible to participate in any other state retirement system: *Provided*, That the foregoing provision does not apply to a person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code: *Provided, however*, That the foregoing provision does not apply to campus police officers in this state pursuant to §18B-4-5. The additional retirement plan contracted for by the governing boards prior to July 1, 1991, remains in effect unless changed by the commission. Nothing in this section considers employees of the council or governing boards as employees of the commission, nor is the commission responsible or liable for retirement benefits contracted by, or on behalf of, the council or governing boards.

CHAPTER 157

(Com. Sub. for S. B. 138 - By Senators Hamilton, Deeds, and Bartlett)

[Passed March 14, 2025; in effect 90 days from passage (June 12, 2025)]

[Approved by the Governor on March 24, 2025.]

AN ACT to amend and reenact §17C-5-2, §61-5-17, and §61-11-18 of the Code of West Virginia, 1931, as amended, relating to creating offenses for second and third or subsequent offenses of fleeing from an officer; establishing criminal penalties for the new offenses; extending the period for which prior convictions may be used; specifying that the new offenses are qualifying offenses for recidivist sentencing enhancement purposes; clarifying that a conviction for fleeing in a vehicle while under the influence of alcohol, controlled substance, or drugs is treated as a driving under the influence offense for criminal enhancement purposes; clarifying that a conviction for fleeing in vehicle while under the influence of alcohol, controlled substances, or drugs is treated as a driving under the influence for licensure purposes; and creating criminal penalties.

Be it enacted by the Legislature of West Virginia:

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances, or drugs; penalties.

(a) *Definitions.* —

(1) "Impaired state" means a person:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug or inhalant substance;

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight.

(2) "Bodily injury" means injury that causes substantial physical pain, illness, or any impairment of physical condition.

(3) "Controlled substance" has the meaning provided in §60A-1-101 of this code.

(4) "Serious bodily injury" means bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(5) "Test and lock program" means the Motor Vehicle Test and Lock Program, established in §17C-5A-3a and administered by the Division of Motor Vehicles.

(b) Any person who drives a vehicle in this state while he or she is in an impaired state, and such impaired state proximately causes the death of any person, including an embryo or fetus as defined in §61-2-30 of this code, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than 15 years and shall be fined not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of 10 years or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code:

Provided, That any death charged under this subsection must occur within one year of the offense: *Provided, however*, That if the person has previously been convicted under this section, the person shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code.

(c) Any person who drives a vehicle in this state while he or she is in an impaired state, and such impaired state proximately causes serious bodily injury to any person, including an embryo or fetus as defined in §61-2-30 of this code, other than himself or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than 10 years and shall be fined not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of five years or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That if the person has previously been convicted under this section, the person shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code.

(d) Any person who drives a vehicle in this state while he or she is in an impaired state, and such impaired state proximately causes a bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than one year and shall be fined not less than \$200 nor more than \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of two years or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That if the person has previously been convicted under this section, the person shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of

Motor Vehicles for life or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code. Any jail term imposed pursuant to this subsection shall include actual confinement of not less than 24 hours: *Provided, however,* That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(e) Any person who drives a vehicle on any public highway or private road in this state: (1) While he or she is in an impaired state; or (2) while he or she is in an impaired state but has an alcohol concentration in his or her blood of less than fifteen hundredths of one percent, by weight, is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for up to six months and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided,* That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(f) Any person who drives a vehicle on any public highway or private road in this state while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than six months, which jail term is to include actual confinement of not less than 24 hours, and shall be fined not less than \$200 nor more than \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code. A person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(g) Any person who, being a habitual user of narcotic drugs or amphetamines, or any derivative thereof, drives a vehicle on any public highway or private road in this state is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term is to include actual confinement of not less than 24 hours, and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months. A person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(h) Any person who knowingly permits his or her vehicle to be driven on any public highway or private road in this state by any other person who is in an impaired state is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code.

(i) Any person who knowingly permits his or her vehicle to be driven on any public highway or private road in this state by any other person who is a habitual user of narcotic drugs or amphetamines, or any derivative thereof, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months.

(j) (1) Any person under the age of 21 years who drives a vehicle on any public highway or private road in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction

thereof, shall be fined not less than \$25 nor more than \$100, and have his or her license to operate a motor vehicle suspended by the Commissioner of the Division of Motor Vehicles for a period of 60 days or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for 24 hours and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or until the person's 21st birthday, whichever period is longer, or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings, from time to time, to allow the person to participate in the test and lock program as provided in §17C-5A-3a of this code. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection may not be construed as an admission or be used as evidence.

(2) (A) Notwithstanding subdivision (1) of this subsection, a person shall have his or her license to operate a motor vehicle suspended or revoked for a minimum period of one year or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code, if the person:

(i) Has previously been convicted under this subsection and is subsequently convicted of an offense under another subsection of this section; or

(ii) Is convicted under this subsection and has previously been convicted of an offense under another subsection of this section.

(B) Nothing in this subdivision permits a shorter period of license revocation, license suspension, or participation in the test

and lock program than is mandatory for the specific offense for which the person is convicted.

(3) A person arrested and charged with an offense under the provisions of this subsection or subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(k) Any person who drives a vehicle on any public highway or private road in this state while he or she is in an impaired state and has within the vehicle one or more other persons who are unemancipated minors who have not yet reached their 16th birthday is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than 12 months, and shall be fined not less than \$200 nor more than \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That such jail term shall include actual confinement of not less than 48 hours: *Provided, however*, That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(l) A person convicted of an offense under this section, who has previously been convicted of any offense under this section on one occasion, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than six months nor more than one year, may be fined not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for 10 years or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That if the second conviction is for an offense as described in subsection (b), (c), or (d) of this section and the subsection creating the offense requires a period of incarceration, period of license revocation, or fine that is greater than what is required for a conviction under this subsection, the

greater period of incarceration, period of revocation, or fine shall be imposed: *Provided, however,* That this section does not apply to a second conviction that is subject to a period of license revocation under subsection (j) of this section.

(m) A person convicted of an offense under this section, who has previously been convicted of any offense under this section on two or more occasions, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than five years, shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code, and the court may, in its discretion, impose a fine of not less than \$3,000 nor more than \$5,000: *Provided,* That if the third or subsequent conviction is for an offense as described in subsection (b), (c), or (d) of this section and the subsection creating the offense requires a period of incarceration, period of license revocation, or fine that is greater than what is required for a conviction under this subsection, the greater period of incarceration, period of revocation, and fine shall be imposed: *Provided, however,* That this section does not apply to a third or subsequent conviction that is subject to a period of license revocation under subsection (j) of this section.

(n) For purposes of subsections (l) and (m) of this section relating to second, third, and subsequent offenses, the following events shall be regarded as offenses and convictions under this section:

(1) Any conviction under the provisions of subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section, or under a prior enactment of this section, for an offense which occurred within the 10-year period immediately preceding the date of arrest in the current proceeding;

(2) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section,

which offense occurred within the 10-year period immediately preceding the date of arrest in the current proceeding;

(3) Any period of conditional probation imposed pursuant to §17C-5-2b of this code for violation of subsection (e) of this section, which violation occurred within the 10-year period immediately preceding the date of arrest in the current proceeding; and

(4) Any conviction under the provisions of §61-5-17(j) of this code or under a prior enactment of that subsection, for an offense which occurred within the 15-year period immediately preceding the date of arrest in the current proceeding.

(o) A person may be charged in a warrant, indictment, or information for a second or subsequent offense, as described in subsection (j), (l), or (m) of this section, if the person has been previously arrested for, or charged with, a violation of this section which is alleged to have occurred within the applicable time period for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that case, the warrant or indictment or information must set forth the date, location, and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final, or the person has previously had a period of conditional probation imposed pursuant to §17C-5-2b of this code.

(p) The fact that any person charged with a violation of subsection (b), (c), (d), (e), (f), or (g) of this section, or any person permitted to drive as described under subsection (h) or (i) of this section, is or has been legally entitled to use alcohol, a controlled substance, or a drug does not constitute a defense against any charge of violating subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section.

(q) The sentences provided in this section upon conviction for a violation of this article are mandatory and are not subject to suspension or probation: *Provided*, That the court may apply the

provisions of §62-11A-1 *et seq.* of this code to a person sentenced or committed to a term of one year or less for a first offense under this section: *Provided, however,* That the court may impose a term of conditional probation pursuant to §17C-5-2b of this code to persons adjudicated thereunder. An order for home detention by the court pursuant to the provisions of §62-11B-1 *et seq.* of this code may be used as an alternative sentence to any period of incarceration required by this section for a first or subsequent offense: *Provided further,* That for any period of home incarceration ordered for a person convicted of a second offense under this section, electronic monitoring shall be required for no fewer than five days of the total period of home confinement ordered and the offender may not leave home for those five days notwithstanding the provisions of §62-11B-5 of this code: *And provided further,* That for any period of home incarceration ordered for a person convicted of a third or subsequent violation of this section, electronic monitoring shall be included for no fewer than 10 days of the total period of home confinement ordered and the offender may not leave home for those 10 days notwithstanding §62-11B-5 of this code.

(r) A person whose license to operate a motor vehicle has been revoked or suspended by the Commissioner of the Division of Motor Vehicles pursuant to this section must complete a comprehensive safety and treatment program as set forth in §17C-5A-3 of this code before his or her license to operate a motor vehicle can be reinstated and his or her driving privileges restored.

(s) For any offense for which an alternative revocation period is permitted conditioned upon participation in the test and lock program, an alternative sentence may not be imposed without the consent of the driver.

(t) Upon entering the order of conviction for an offense under this section, or the imposition of conditional probation as provided in §17C-5-2b of this code, the clerk of the court shall immediately transmit the order to the Commissioner of the Division of Motor Vehicles.

(u) The amendments made to this section during the 2020 regular session of the Legislature shall become effective on July 1, 2020.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-17. Obstructing officer; fleeing from officer; making false statements to officer; interfering with emergency communications; penalties; definitions.

(a) A person who by threats, menaces, acts, or otherwise forcibly or illegally hinders, or obstructs or attempts to hinder or obstruct a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and confined.

(b) A person who intentionally disarms or attempts to disarm a law-enforcement officer, correctional officer, probation officer, parole officer, courthouse security officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less than one nor more than five years.

(c) A person who, with intent to impede or obstruct a law-enforcement officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal in the conduct of an investigation of a misdemeanor or felony offense, knowingly and willfully makes a materially false statement is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than \$200, or confined in jail for five days, or both fined and confined. The provisions of this section do not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half-sibling, child, stepchild, or grandchild, whether related by blood or

marriage, of the person under investigation. Statements made by the person under investigation may not be used as the basis for prosecution under this subsection. For purposes of this subsection, "law-enforcement officer" does not include a watchman, a member of the West Virginia State Police, or college security personnel who is not a certified law-enforcement officer. A criminal charge under this subsection relating to the investigation of a misdemeanor offense may not be used to seek or support a secured bond or pre-trial incarceration.

(d) A person who intentionally flees or attempts to flee by any means other than the use of a vehicle from a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity who is attempting to make a lawful arrest of or to lawfully detain the person, and who knows or reasonably believes that the officer is attempting to arrest or lawfully detain him or her, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 and confined in jail for 10 days. A person convicted of a second offense violation of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$250 nor more than \$1,000 and confined in jail for 30 days. A person who is convicted of a third or subsequent offense in violation of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$2,000 and confined in jail not less than 60 days nor more than one year.

(e) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 and shall be confined in jail not more than one year. A person who is convicted of a second offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$2,000 or shall be confined in a state correctional

facility for not less than one year nor more than three years, or both fined and confined. A person who is convicted of a third or subsequent offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not less than \$2,000, nor more than \$5,000 and shall be confined in a state correctional facility not less than two nor more than five years, or both fined and confined.

(f) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who operates the vehicle in a manner showing a reckless indifference to the safety of others, is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$2,000 and shall be confined in a state correctional facility not less than one nor more than five years. A person who is convicted of a second offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$2,000 or shall be confined in a state correctional facility for not less than two nor more than 10 years, or both fined and confined. A person who is convicted of a third or subsequent offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not less than \$2,000 nor more than \$5,000 and shall be confined in a state correctional facility not less than three nor more than 15 years, or both fined and confined.

(g) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes damage to the real or personal property of a person during or resulting from his or her flight, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000 and shall be confined in jail for not less than six months nor more than one year. A person who is convicted of a second offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not less than \$3,000

nor more than \$5,000 or shall be confined in a state correctional facility for not less than one year nor more than three years, or both fined and confined. A person who is convicted of a third or subsequent offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$8,000 and shall be confined in a state correctional facility not less than two nor more than five years, or both fined and confined.

(h) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes bodily injury to a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less than three nor more than 10 years. A person who is convicted of a second offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than five years nor more than 10 years. A person who is convicted of a third or subsequent offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less than five nor more than 15 years.

(i) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes death to a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than five nor more than 15 years. A person who is convicted of a second offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than 15 years nor more than life. A person who is convicted of a third or subsequent offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for life. A person

confined pursuant to this subsection is not eligible for parole prior to having served a minimum of three years of his or her sentence or the minimum period required by §62-12-13 of this code, whichever is greater.

(j) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who is under the influence of alcohol, controlled substances, or drugs, is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less than three nor more than 10 years. A person who is convicted of a second offense of violation of this subsection is guilty of a felony and shall be confined in a state correctional facility for not less than five years nor more than 15 years. A person who is convicted of a third or subsequent offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less than 10 nor more than 20 years. A conviction for a violation of this subsection may be used as a predicate offense for driving under the influence, second offense driving under the influence, or third offense driving under the influence, and it shall be treated as a driving under the influence conviction for licensure purposes by the Division of Motor Vehicles.

(k) For purposes of this section, the term "vehicle" includes any motor vehicle, motorcycle, motorboat, all-terrain vehicle, or snowmobile, as those terms are defined in §17A-1-1 of this code, whether or not it is being operated on a public highway at the time and whether or not it is licensed by the state.

(l) For purposes of this section, the terms "flee", "fleeing", and "flight" do not include a person's reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement officer to maintain appropriate surveillance, for the purpose of complying with the officer's direction to stop.

(m) The revisions to subsections (e), (f), (g), and (h) of this section enacted during the 2010 regular legislative session shall be known as the Jerry Alan Jones Act.

(n) (1) A person, with the intent to purposefully deprive another person of emergency services, may not interfere with or prevent another person from making an emergency communication, which a reasonable person would consider necessary under the circumstances, to law-enforcement, fire, or emergency medical services personnel.

(2) For the purpose of this subsection, the term "interfere with or prevent" includes, but is not limited to, seizing, concealing, obstructing access to, or disabling or disconnecting a telephone, telephone line, or equipment or other communication device.

(3) For the purpose of this subsection, the term "emergency communication" means communication to transmit warnings or other information pertaining to a crime, fire, accident, power outage, disaster, or risk of injury or damage to a person or property.

(4) A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than one day nor more than one year, or shall be fined not less than \$250 nor more than \$2,000, or both fined and confined.

(5) A person who is convicted of a second offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months nor more than one year, or fined not less than \$500 nor more than \$3,000, or both fined and confined.

(6) A person who is convicted of a third or subsequent offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than six months nor more than one year or fined not less than \$500 nor more than \$4,000, or both fined and confined.

(o) A person is guilty of filing a false complaint against a law-enforcement officer when, knowing the information reported is false or baseless, he or she:

(1) Initiates a false complaint of improper action of a law-enforcement officer relating to an incident or other circumstance;

(2) Reports, by word or action, to any official or quasi-official agency, or organization having the function of dealing with conduct of law-enforcement officers which did not occur, does not in fact exist; or

(3) Reports to a law-enforcement officer or agency the alleged occurrence of any offense or incident which did not in fact occur.

Any person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail not more than six months, or both fined and confined.

(p) In determining the number of prior convictions for purposes of imposing punishment under this section, the court shall disregard all such prior convictions occurring more than 15 years prior to the offense in question.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-18. Punishment for second or third offense of felony.

(a) For purposes of this section, "qualifying offense" means any offense or an attempt or conspiracy to commit any of the offenses in the following provisions of this code:

(1) §60A-4-401(a)(i) and §60A-4-401(a)(ii);

(2) §60A-4-406;

(3) §60A-4-409(b)(1) and §60A-4-409 (b)(2);

(4) §60A-4-411;

- (5) §60A-4-414;
- (6) §60A-4-415;
- (7) §60A-4-416(a);
- (8) §61-2-1;
- (9) §61-2-4;
- (10) §61-2-7;
- (11) §61-2-9(a);
- (12) §61-2-9a(d) and §61-2-9a(e);
- (13) §61-2-9b;
- (14) §61-2-9c;
- (15) §61-2-9d;
- (16) §61-2-10;
- (17) §61-2-10b(b) and §61-2-10b(c);
- (18) Felony provisions of §61-2-10b(d);
- (19) §61-2-12;
- (20) Felony provisions of §61-2-13;
- (21) §61-2-14;
- (22) §61-2-14a(a) and §61-2-14a(d);
- (23) §61-2-14c;
- (24) §61-2-14d(a) and §61-2-14d(b);
- (25) §61-2-14f;
- (26) §61-2-14h(a), §61-2-14h(b), and §61-2-14h(c);

- (27) §61-2-16a(a) and §61-2-16a(b);
- (28) Felony provisions of §61-2-16a(c);
- (29) §61-2-28(d);
- (30) §61-2-29(d) and §61-2-29(e);
- (31) §61-2-29a;
- (32) §61-3-1;
- (33) §61-3-2;
- (34) §61-3-3;
- (35) §61-3-4;
- (36) §61-3-5;
- (37) §61-3-6;
- (38) §61-3-7;
- (39) §61-3-11;
- (40) Felony violation of 61-3-12;
- (41) §61-3-13(a);
- (42) Felony violation of §61-3-18;
- (43) Felony violation of §61-3-19;
- (44) Felony violation of §61-3-20;
- (45) Felony violation of §61-3-20a;
- (46) Felony violation of §61-3-21;
- (47) §61-3-22;
- (48) Felony violation of §61-3-24;

- (49) Felony violation of §61-3-24a;
- (50) §61-3-27;
- (51) §61-3-54;
- (52) §61-3C-14b;
- (53) §61-3E-5;
- (54) Felony violation of §61-5-10;
- (55) Felony violations of §61-5-17;
- (56) §61-5-27;
- (57) §61-6-24;
- (58) Felony provisions of §61-7-7;
- (59) §61-7-12;
- (60) §61-7-15;
- (61) §61-7-15a;
- (62) §61-8-12;
- (63) §61-8-19(b);
- (64) §61-8A-2;
- (65) §61-8A-4;
- (66) §61-8A-5;
- (67) §61-8B-3;
- (68) §61-8B-4;
- (69) §61-8B-5;
- (70) §61-8B-7;

- (71) §61-8B-10;
- (72) §61-8B-11b;
- (73) §61-8C-2;
- (74) §61-8C-3;
- (75) §61-8C-3a;
- (76) §61-8D-2;
- (77) §61-8D-2a;
- (78) §61-8D-3;
- (79) §61-8D-3a;
- (80) §61-8D-4;
- (81) §61-8D-4a;
- (82) §61-8D-5;
- (83) §61-8D-6;
- (84) §61-10-31;
- (85) §61-11-8;
- (86) §61-11-8a;
- (87) §61-14-2; and
- (88) §17C-5-2(b), driving under the influence causing death.

(b) Except as provided by subsection (c) of this section, when any person is convicted of a qualifying offense and is subject to imprisonment in a state correctional facility for the qualifying offender and it is determined, as provided in §61-11-19 of this code, that the person had been previously convicted in the United States of a crime punishable by imprisonment in a state or federal correctional facility, the court shall, if the sentence to be imposed

is for a definite term of years, add five years to the time for which the person is or would be otherwise sentenced. Whenever in that case the court imposes an indeterminate sentence, the minimum term shall be twice the term of years otherwise provided for under the sentence.

(c) Notwithstanding any provision of this code to the contrary, when any person is convicted of first degree murder or second degree murder or a violation of §61-8B-3 of this code and it is determined, as provided in §61-11-19 of this code, that the person had been previously convicted in this state of first degree murder, second degree murder, or a violation of §61-8B-3 of this code, or has been so convicted under any law of the United States or any other state for an offense which has the same or substantially similar elements as any offense described in this subsection, the person shall be punished by imprisonment in a state correctional facility for life and is not eligible for parole.

(d) When it is determined, as provided in §61-11-19 of this code, that the person has been twice previously convicted in the United States of a crime punishable by imprisonment in a state or federal correctional facility which has the same or substantially similar elements as a qualifying offense, the person shall be sentenced to imprisonment in a state correctional facility for life: *Provided*, That prior convictions arising from the same transaction or series of transactions shall be considered a single offense for purposes of this section: *Provided, however*, That the most recent previous qualifying offense which would otherwise constitute a qualifying offense for purposes of this subsection may not be considered if more than 20 years have elapsed between: (1) The release of the person from his or her term of imprisonment or period of supervision resulting from the most recent qualifying offense or the expiration of a period of supervised release resulting from the offense; and (2) the conduct underlying the current charge.

CHAPTER 158

(Com. Sub. for S. B. 225 - By Senator Woodrum)

[Passed April 12, 2025; in effect from passage]

[Approved by the Governor on April 29, 2025.]

AN ACT to amend and reenact §15-10-5 of the Code of West Virginia, 1931, as amended, relating to incorporating in subsection (b) the following additional full time federal law-enforcement officers of the United States government who are authorized to carry firearms while performing their duties in furtherance of the allowances contained in subsection (a) of this section of the code- United States Fish and Wildlife special agents and law enforcement, Diplomatic Security Service special agents, Coast Guard special agents, Customs and Border Protection law-enforcement agents and officers, Department of Defense special agents, Federal Protective Service officers, Federal Bureau of Prisons officers, and Immigration and Customs Enforcement special agents and law enforcement; also relating to expanding the powers of law-enforcement officers of the National Park Service and the United States Forest Service to include the authority to arrest, conduct searches, conduct seizures and enforce all laws of this state and also establishes that these officers will have the authority to undertake an independent investigation pursuant to that authority but only for activities occurring on lands managed and overseen by the National Park Service or the United States Forest Service.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-5. Federal officers' peace-keeping authority.

(a) Notwithstanding any provision of this code to the contrary, any person who is employed by the United States government as a federal law-enforcement officer and is listed in subsection (b) of this section has the same authority to enforce the laws of this state, except state or local traffic laws or parking ordinances, as that authority granted to state or local law-enforcement officers, if one or more of the following circumstances exist:

(1) The federal law-enforcement officer is requested to provide temporary assistance by the head of a state or local law-enforcement agency or the designee of the head of the agency and that request is within the state or local law-enforcement agency's scope of authority and jurisdiction and is in writing: *Provided*, That the request does not need to be in writing if an emergency situation exists involving the imminent risk of loss of life or serious bodily injury;

(2) The federal law-enforcement officer is requested by a state or local law-enforcement officer to provide the officer temporary assistance when the state or local law-enforcement officer is acting within the scope of the officer's authority and jurisdiction and where exigent circumstances exist; or

(3) A felony is committed in the federal law-enforcement officer's presence or under circumstances indicating a felony has just occurred.

(b) This section applies to the following persons who are employed as full-time federal law-enforcement officers by the United States government and who are authorized to carry firearms while performing their duties:

(1) Federal Bureau of Investigation special agents;

(2) Drug Enforcement Administration special agents;

(3) United States Marshals Service marshals and deputy marshals;

(4) United States Postal Service inspectors;

(5) Internal Revenue Service special agents;

- (6) United States Secret Service special agents;
 - (7) Bureau of Alcohol, Tobacco, and Firearms special agents;
 - (8) Police officers employed at the Federal Bureau of Investigation's criminal justice information services division facility located within this state;
 - (9) Department of Veterans Affairs Police and Department of Veterans Affairs special investigators;
 - (10) Office of Inspector General special agents;
 - (11) Federal Air Marshals with the Federal Air Marshal Service;
 - (12) United States Fish and Wildlife Service special agents and law enforcement;
 - (13) Diplomatic Security Service special agents;
 - (14) Coast Guard special agents;
 - (15) Customs and Border Protection law-enforcement agents and officers;
 - (16) Department of Defense special agents;
 - (17) Federal Protective Service officers;
 - (18) Federal Bureau of Prisons officers; and
 - (19) Immigration and Customs Enforcement special agents and law enforcement.
- (c) Notwithstanding any provision of this code to the contrary, law-enforcement commissioned rangers of the National Park Service have the powers of arrest, search, and seizure as to any offense under the laws of this state committed within the boundaries of a national park, national recreation area, or on other real property included in the National Park System.
- (d) Notwithstanding any provision of this code to the contrary, law-enforcement officers and special agents commissioned by the

United States Forest Service have the powers of arrest, search, and seizure as to any offense under the laws of this state committed within the boundaries of national forests or on other real property managed or overseen by the United States Forestry Service and while acting in the scope of their official duties on such federally managed lands.

(e) Any person acting under the authority granted pursuant to this section:

(1) Has the same authority and is subject to the same exemptions and exceptions to this code as a state or local law-enforcement officer;

(2) Is not an officer, employee, or agent of any state or local law-enforcement agency;

(3) May not initiate or conduct an independent investigation into an alleged violation of any provision of this code except to the extent necessary to preserve evidence or testimony at risk of loss immediately following an occurrence described in subdivision (3), subsection (a) of this section: *Provided*, That law-enforcement commissioned rangers of the National Park Service and law-enforcement officers and special agents commissioned by the United States Forest Service may undertake an independent investigation pursuant to the authority described in subsections (c) and (d) of this section: *Provided, however*, That nothing in this section shall be construed to permit law-enforcement officers of the National Park Service, or the United States Forest Service, to initiate or conduct investigations unrelated to activities occurring on federal lands managed or overseen by the National Park Service or the United States Forest Service;

(4) Is subject to 28 U.S.C. § 1346, the Federal Tort Claims Act; and

(5) Has the same immunities from liability as a state or local law-enforcement officer.



CHAPTER 159

**(H. B. 2802 - By Delegates Pinson, Burkhammer, Kump,
Funkhouser, Maynor, Hornby, Holstein, Kelly, and Akers)**

[Passed April 11, 2025; in effect 90 days from passage (July 10, 2025)]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §30-29-3 of the Code of West Virginia, 1931, as amended, relating to law-enforcement training and certification; establishing certain standards governing in-service law-enforcement officer training curricula and in-service supervisory level training curricula promulgated by rules of the subcommittee; and providing that the rules shall include certain provisions for substitution of training credit hours for officers engaging in on-site participation in school safety programs.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-3. Duties of the subcommittee.

(a) The subcommittee shall, by or pursuant to rules proposed for legislative approval in accordance with §29A-3-1 *et seq.* of this code:

(1) Provide funding for the establishment and support of law-enforcement training academies in the state;

(2) Establish standards governing the establishment and operation of the law-enforcement training academies, including regional locations throughout the state, in order to provide access

to each law-enforcement agency in the state in accordance with available funds;

(3) Establish minimum law-enforcement instructor qualifications;

(4) Certify qualified law-enforcement instructors;

(5) Maintain a list of approved law-enforcement instructors;

(6) Promulgate standards governing the training, firearms qualification, and initial and ongoing professional certification of law-enforcement officers and the entry-level, law-enforcement training curricula. These standards shall require satisfactory completion of a minimum of 800 classroom hours as promulgated by legislative rule and shall provide that the required classroom hours shall be accumulated on the basis of a full-time curricula;

(7) Establish standards governing in-service, law-enforcement officer training curricula and in-service supervisory level training curricula: *Provided*, That the rules shall include a provision for substitute hours of in-service training or supervisory level in-service training credits to the extent and in a manner determined appropriate by the subcommittee for law-enforcement officers or certified law-enforcement instructors who engage in on-site participation in a school safety program authorized by law or by a law-enforcement agency;

(8) Certify organized criminal enterprise investigation techniques with a qualified anti-racial profiling training course or module;

(9) Establish standards governing mandatory training to effectively investigate organized criminal enterprises as defined in §61-13-1 *et seq.* of this code while preventing racial profiling, as defined in §30-29-10 of this code, for entry-level training curricula and for law-enforcement officers who have not received such training as certified by the subcommittee as required in this section;

(10) Establish procedures for implementation of a course in investigation of organized criminal enterprises which includes an

anti-racial training module to be available on the Internet or otherwise to all law-enforcement officers. The procedures shall include the frequency with which a law-enforcement officer shall receive training in investigation of organized criminal enterprises and anti-racial profiling and a time frame for which all law-enforcement officers must receive such training: *Provided*, That all law-enforcement officers in this state shall receive such training no later than July 1, 2012. In order to implement and carry out the intent of this section, the subcommittee may promulgate emergency rules pursuant to §29A-3-15 of this code;

(11) Certify or decertify or reactivate law-enforcement officers, as provided in §30-29-5 and §30-29-11 of this code;

(12) Establish standards and procedures for the reporting of complaints and certain disciplinary matters concerning law-enforcement officers and for reviewing the certification of law-enforcement officers. These standards and procedures shall provide for preservation of records and access to records by law-enforcement agencies and conditions as to how the information in those records is to be used regarding an officer's law-enforcement employment by another law-enforcement agency:

(A) The subcommittee shall establish and manage a database that is available to all law-enforcement agencies in the state concerning the status of any person's certification;

(B) Personnel or personal information not resulting in a criminal conviction is exempt from disclosure pursuant to the provisions of chapter 29B of this code;

(13) Seek supplemental funding for law-enforcement training academies from sources other than the fees collected pursuant to §30-29-4 of this code;

(14) Any responsibilities and duties as the Legislature may, from time to time, see fit to direct to the subcommittee;

(15) Establish standards and procedures for initial and ongoing training for law-enforcement officers responsible for investigating

sexual assault cases involving adult victims. This training shall include instruction on:

- (A) The neurobiology of trauma;
- (B) Trauma-informed interviewing; and
- (C) Investigative techniques;

(16) Submit, on or before September 30 of each year, to the Governor, the Speaker of the House of Delegates, the President of the Senate, and, upon request, to any individual member of the Legislature, a report on its activities during the previous year, and an accounting of funds paid into and disbursed from the special revenue account established pursuant to §30-29-4 of this code;

(17) Develop and promulgate rules for state, county, and municipal law-enforcement officers, law-enforcement agencies, and communications and emergency operations centers that dispatch law-enforcement officers with regard to the identification, investigation, reporting, and prosecution of suspected child abuse and neglect: *Provided*, That such rules and procedures must be consistent with the priority criteria prescribed by generally applicable department procedures;

(18) Make recommendations to the Governor's Committee on Crime, Delinquency, and Correction for legislation related to the subcommittee's duties and responsibilities, or for research or studies by the Division of Administrative Services on topics related to the subcommittee's duties and responsibilities; and

(19) Promulgate standards governing the training, firearms qualification, and initial and ongoing professional certification of a tactical medical professional, as defined in §30-43-1 of this code, on or before January 1, 2024. This training program shall include awarding a certificate upon successful completion of the program that qualifies the tactical medical professional to carry a firearm while on duty.

(b) In addition to the duties authorized and established by this section, the subcommittee may:

(1) Establish training to effectively investigate human trafficking offenses as defined in §61-2-1 *et seq.* of this code for entry-level training curricula and for law-enforcement officers who have not received such training as certified by the committee as required by this section; and

(2) Establish procedures for the implementation of a course in investigation of human trafficking offenses. The course may include methods of identifying and investigating human trafficking and methods for assisting trafficking victims. In order to implement and carry out the intent of this subdivision, the committee may promulgate emergency rules pursuant to §29A-3-15 of this code.

(c) Notwithstanding any provision of this code to the contrary, the subcommittee may deny an application for the establishment of a new law-enforcement training academy if it is determined by the subcommittee that no actual need exists for the establishment of additional law-enforcement training academies to meet the needs of existing law-enforcement agencies in the state.

CHAPTER 160

**(Com. Sub. for H. B. 3014 - By Delegates Shamblin, Hanshaw
(Mr. Speaker), Hall, J. Cannon, and Rohrbach)**

[Passed April 11, 2025; in effect 90 days from passage (July 10, 2025)]
[Approved by the Governor on April 30, 2025.]

AN ACT to amend and reenact §16B-3-19 of the Code of West Virginia, 1931, as amended, relating generally to hospital police; creating certain immunities for hospitals with police departments; and clarifying the effect of the section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. HOSPITALS AND SIMILAR INSTITUTIONS.

§16B-3-19. Hospital police departments; appointment of hospital police officers; qualifications; authority; compensation and removal; law-enforcement grants; limitations on liability and when immune from liability.

(a) The governing board of a hospital licensed under §16B-3-2 of this code may establish a hospital police department and appoint qualified individuals to serve as hospital police officers upon any premises owned or leased by the hospital and under the jurisdiction of the governing board, subject to the conditions and restrictions established in this section.

(1) A person who fulfills the certification requirements for law-enforcement officers under §30-29-5 of this code is considered qualified for appointment as a hospital police officer.

(2) A retired police officer may qualify for appointment as a hospital police officer if he or she meets the certification requirements under §30-29-5 of this code.

(3) Before performing duties as a hospital police officer in any county, a person shall qualify as is required of county police officers by:

(A) Taking and filing an oath of office as required by §6-1-1 *et seq.* of this code; and

(B) Posting an official bond as required by §6-2-1 *et seq.* of this code.

(b) A hospital police officer may carry a gun and any other dangerous weapon while on duty if the officer fulfills the certification requirement for law-enforcement officers under §30-29-5 of this code.

(c) It is the duty of a hospital police officer to preserve law and order:

(1) On the premises under the jurisdiction of the governing board and its affiliated properties; and

(2) On any street, road, or thoroughfare, except controlled access highways, immediately adjacent to or passing through the premises under the jurisdiction of the governing board, to which the officer is assigned by the chief executive officer or his or her designee: *Provided*, That a hospital police officer may only enforce the provisions of §17C-1-1 *et seq.* of this code upon request of a local law-enforcement agency.

(A) For the purposes of this subdivision, the hospital police officer is a law-enforcement officer pursuant to the provisions of §30-29-1 *et seq.* of this code;

(B) The hospital police officer has and may exercise all the powers and authority of a law-enforcement officer as to offenses committed within the area assigned;

(C) The hospital police officer is subject to all the requirements and responsibilities of a law-enforcement officer;

(D) Authority assigned pursuant to this subdivision does not supersede in any way the authority or duty of other law-enforcement officers to preserve law and order on such hospital premises;

(E) Hospital police officers may assist a local law-enforcement agency on public highways. The assistance may be provided to control traffic in and around premises owned by the state or political subdivision when:

(i) Traffic is generated as a result of activities or events conducted or sponsored by the hospital; and

(ii) The assistance has been requested by the local law-enforcement agency;

(F) Hospital police officers may assist a local law-enforcement agency in any location under the agency's jurisdiction at the specific request of the agency; and

(G) Hospital police officers shall enforce the general policies and procedures of the hospital as established by the chief executive officer or his or her designee.

(d) The salary of a hospital police officer is paid by the employing hospital's governing board. The hospital shall furnish each hospital police officer with a firearm and an official uniform to be worn while on duty. The hospital shall furnish, and require each officer while on duty to wear, a shield with the appropriate inscription and to carry credentials certifying the person's identity and authority as a hospital police officer.

(e) The governing board of the employing hospital may at its pleasure revoke the authority of any hospital police officer and such officers serve at the will and pleasure of the governing board. The chief executive officer of the hospital or his or her designee shall report the termination of employment of a hospital police officer by filing a notice to that effect in the office of the clerk of each county in which the hospital police officer's oath of office was filed.

(f) For the purpose of hospital police officers appointed and established in this section, the civil service provisions of §8-14-1 *et seq.* of this code and the investigation and interrogation provisions of §8-14A-1 *et seq.* of this code shall not apply.

(g) A hospital police officer shall not be subject to civil or criminal liability unless one of the following applies:

(1) His or her acts or omissions were manifestly outside the scope of employment or official responsibilities;

(2) His or her acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner; or

(3) Liability is expressly imposed upon the hospital police officer by any other provision of this code.

(h) A hospital police officer shall be trained in crisis de-escalation techniques consistent with the goals and objectives of this section: *Provided*, That within 180 days of beginning work as a hospital police officer, the employing hospital shall provide crisis management training to a hospital police officer through a program approved by the Law-Enforcement Professional Standards Subcommittee established by §30-29-2 of this code.

(i) A hospital with a police department is immune from liability if a loss or claim results from civil disobedience, riot, insurrection, or rebellion.

(j) Nothing in this section may be construed as creating a duty of a governing board of a hospital to establish a hospital police department.

CHAPTER 161

(Com. Sub. for H. B. 3181 - By Delegates Howell, Heckert, Ridenour, Masters, Ward, Kelly, Linville, Pinson, Stephens, Marple, and Phillips)

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]
[Approved by the Governor on April 28, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding a new section, designated §30-29-15, relating to law-enforcement purchase of service handguns; authorizing certain law-enforcement officers to purchase service handguns upon honorable separation; providing exceptions for when a service handgun may be purchased; providing that this section does not supersede other specific laws; and creating definitions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-15. Purchase of service handgun by law-enforcement officers separating honorably.

(a) Every chief executive, law-enforcement officer, or law-enforcement official in the state who separates from his or her employing agency or ends his or her elected term of office shall be given the opportunity to purchase his or her issued service handgun at cost: *Provided*, That the employing agency may sell the service handgun to the chief executive, law-enforcement officer, or law-enforcement official, only upon determining that the chief executive, law-enforcement officer, or law-enforcement official is separating honorably and is not the subject of any pending disciplinary complaints, investigations, or actions by the employing agency or the subcommittee.

(b) Notwithstanding the provisions of subsection (a) of this section, the employing agency may not sell a service handgun to any chief executive, law-enforcement officer, or law-enforcement official whom the employing agency:

(1) Knows is prohibited from possessing a firearm by state or federal law;

(2) Reasonably believes to be mentally incapacitated; or

(3) Reasonably believes would constitute a danger to any person or the community.

(c) Nothing in this section shall be construed to supersede, limit, or amend any specific provision of this code authorizing the award of a firearm to a law-enforcement officer of this state.

(d) For purposes of this section, “handgun” means a pistol or revolver as those terms are defined in §61-7-2 of this code.

CHAPTER 162

(H. B. 3515 - By Delegates Akers and Maynor)

[Passed April 10, 2025; in effect 90 days from passage (July 9, 2025)]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §15-2-4 of the Code of West Virginia, 1931, as amended, relating to appointment of officers of the West Virginia State Police; and increasing the number of principal supervisors to 20.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.

(a) The superintendent shall appoint, from the enlisted membership of the State Police, a deputy superintendent who shall hold the rank of lieutenant colonel and be next in authority to the superintendent. The superintendent shall appoint, from the enlisted membership of the State Police, the number of other officers and members he or she considers necessary to operate and maintain the executive offices, training school and forensic laboratory; and to keep records relating to crimes and criminals, coordinate traffic safety activities, maintain a system of supplies and accounting and perform other necessary services.

(b) The ranks within the membership of the State Police shall be colonel, lieutenant colonel, major, captain, first lieutenant, second lieutenant, first sergeant, sergeant, corporal, trooper first class, senior trooper, trooper or cadet trooper. Each member while in uniform shall wear the insignia of rank as provided by law and

written State Police policies. Members assigned to the forensic laboratory shall hold the title of trooper, be classified as criminalists and wear the insignia of classification as provided by written State Police policies.

The superintendent may appoint from the membership of the State Police 20 principal supervisors who shall receive the compensation and hold the temporary rank of lieutenant colonel, major or captain at the will and pleasure of the superintendent. The superintendent may also appoint from the membership of the executive protection section of the State Police two additional supervisors who shall receive the compensation and hold the temporary rank of first lieutenant and serve at the will and pleasure of the superintendent. Appointments are exempt from any eligibility requirements established by the career progression system: *Provided*, That any member appointed from within the executive protection section of the State Police to the temporary rank of first lieutenant must have completed a minimum of two years service within the executive protection section prior to becoming eligible for such appointment. Any person appointed to a temporary rank under the provisions of this article remains eligible for promotion or reclassification under the provisions of the career progression system if his or her permanent rank is below that of first lieutenant. Upon the termination of a temporary appointment by the superintendent, the member may not be reduced to a rank or classification below his or her permanent rank or classification, unless the reduction results from disciplinary action, and remains eligible for subsequent appointment to a temporary rank.



CHAPTER 163

(Com. Sub. for S. B. 325 - By Senator Woodrum)

[Passed April 11, 2025; in effect from passage]

[Approved by the Governor on April 28, 2025.]

AN ACT to amend and reenact §64-5-1 *et seq.* and §64-5A-1 *et seq.* of the Code of West Virginia, 1931, as amended; and to amend the code by adding a new article, designated §64-5B-1, relating to authorizing certain agencies of the Department of Health, Department of Human Services, and the Office of Inspector General to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; directing certain agencies of the Department of Health to amend current legislative rules; authorizing the Department of Health to promulgate a legislative rule relating to public water systems; authorizing the Department of Health to promulgate a legislative rule relating to statewide trauma and emergency care system; authorizing the Department of Health to promulgate a legislative rule relating to fatality and mortality review team; authorizing the Department of Health to promulgate a legislative rule relating to vital statistics; authorizing the Department of Health to promulgate a legislative rule relating to emergency medical services; authorizing the Department of Health to promulgate a legislative rule relating to the Primary Care Support Program; authorizing the Department of Health to promulgate a legislative rule relating to the general provisions of the Medical Cannabis Program; authorizing the Department of Health to promulgate a legislative rule relating to growers and processors of the Medical Cannabis Program; authorizing the Department of Health to promulgate a legislative rule relating to laboratories of the Medical Cannabis Program; authorizing the

Department of Health to promulgate a legislative rule relating to dispensaries of the Medical Cannabis Program; authorizing the Department of Health to promulgate a legislative rule relating to the Safe Harbor Letter for the Medical Cannabis Program; authorizing the Department of Health to promulgate a legislative rule relating to critical access hospitals; directing the Department of Health to amend a legislative rule relating to sewage treatment and collection system design standards; authorizing the Department of Human Services to promulgate a legislative rule relating to the Recovery Residence Certification and Accreditation Program; authorizing the Department of Human Services to promulgate a legislative rule relating to the pilot program for drug screening of applicants for cash assistance; directing the Department of Human Services to amend a legislative rule relating to child placing agencies licensure; authorizing the Office of Inspector General to promulgate a legislative rule relating to hospital licensure; and authorizing the Office of Inspector General to promulgate a legislative rule relating to behavioral health centers licensure.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Department of Health.

(a) The legislative rule filed in the State Register on August 27, 2024, authorized under the authority of §16-1-4 of this code, modified by the Department of Health to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 11, 2024, relating to the Department of Health (public water systems, 64 CSR 03), is authorized.

(b) The legislative rule filed in the State Register on August 30, 2024, authorized under the authority of §16-4C-23 of this code, modified by the Department of Health to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 25, 2024, relating to the Department

of Health (statewide trauma and emergency care system, 64 CSR 27), is authorized.

(c) The legislative rule filed in the State Register on September 3, 2024, authorized under the authority of §16-1-4 of this code, relating to the Department of Health (fatality and mortality review team, 64 CSR 29), is authorized.

(d) The legislative rule filed in the State Register on September 3, 2024, authorized under the authority of §16-5-3 of this code, modified by the Department of Health to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 25, 2024, relating to the Department of Health (vital statistics, 64 CSR 32), is authorized.

(e) The legislative rule filed in the State Register on August 27, 2024, authorized under the authority of §16-4C-23 of this code, relating to the Department of Health (emergency medical services, 64 CSR 48), is authorized.

(f) The legislative rule filed in the State Register on August 27, 2024, authorized under the authority of §16-2H-2 of this code, relating to the Department of Health (Primary Care Support Program, 64 CSR 70), is authorized.

(g) The legislative rule filed in the State Register on August 27, 2024, authorized under the authority of §16A-3-1 of this code, modified by the Department of Health to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 25, 2024, relating to the Department of Health (general provisions of the Medical Cannabis Program, 64 CSR 109), is authorized.

(h) The legislative rule filed in the State Register on August 30, 2024, authorized under the authority of §16A-3-1 of this code, relating to the Department of Health (grower and processors of the Medical Cannabis Program, 64 CSR 110), is authorized.

(i) The legislative rule filed in the State Register on August 30, 2024, authorized under the authority of §16A-3-1 of this code,

relating to the Department of Health (laboratories of the Medical Cannabis Program, 64 CSR 111), is authorized.

(j) The legislative rule filed in the State Register on August 27, 2024, authorized under the authority of §16A-3-1 of this code, relating to the Department of Health (dispensaries of the Medical Cannabis Program, 64 CSR 112), is authorized.

(k) The legislative rule filed in the State Register on August 29, 2024, authorized under the authority of §16A-3-1 of this code, relating to the Department of Health (Safe Harbor Letter for the Medical Cannabis Program, 64 CSR 113), is authorized.

(l) The legislative rule filed in the State Register on December 5, 2023, authorized under the authority of §16B-3-14 of this code, relating to the Department of Health (critical access hospitals, 65 CSR 09), is authorized with the amendments set forth below:

On page 1, subsection 1.1., by striking out "W. Va. Code §16-5B-14(d)" and inserting in lieu thereof "W. Va. Code §16B-3-14";

On page 1, subsection 1.2., by striking out "W. Va. Code §16-5B-14(d)" and inserting in lieu thereof "W. Va. Code §16B-3-14";

On page 2, subsection 2.2., by striking out the words "and Human Resources";

And,

On page 2, subdivision 3.2.3., after the words "Medical Treatment &" by inserting the word "Labor".

(m) The Legislature directs the Department of Health to amend the legislative rule filed in the State Register on April 4, 2022, authorized under the authority of §16-1-4 of this code, relating to the Department of Health (sewage treatment and collection system design standards, 64 CSR 47), authorized with the amendment set forth below:

On pages 69 through 72, by striking out Table 64-47-B and inserting in lieu thereof a new Table 64-47-B to read as follows:

**TABLE 64-47-B.- MINIMUM DESIGN LOADINGS FOR
SEWAGE TREATMENT FACILITIES**

Facility Description	Unit Sewage Design Flow (gpd)	Unit Five-Day BOD (lbs/day)
Airports	15	.05
Each employee	5	.02
Each passenger		
Assembly halls	2	.02
Per seat		
Bowling alleys (no food service)	75 225	.13
Per alley		
Per alley with bar		
**Brewery	2	.02
Per seat manufacture and sampling only	5	.04
Per seat with ABCA License for onsite consumption by the glass ¹		
Churches	5	.02
Per member with kitchen	2	.01
Per member without kitchen		
**Cidery	2	.02
Per seat manufacture and sampling only	5	.04
Per seat with ABCA License for onsite consumption by the glass ¹		
Clinics	20	.03
Per staff	5	.02
Per patient		
Country clubs	25	.05
Per member (non-resident)	70	.17
Per member (resident)		

Facility Description	Unit Sewage Design Flow (gpd)	Unit Five-Day BOD (lbs/day)
**Distillery	2	.02
Per seat manufacture and sampling only	5	.04
Per seat with ABCA License for onsite consumption by the glass ¹		
Domestic sewage	70	.17*
Residences (per resident -a-)	50	.17
New collection system	140	.34
Summer cottages, etc., per resident Apartment houses	210	.51
—one bedroom	280	.60
—two		
—three		
Factories (per worker)	35	.04
Heavy with café and shower	25	.02
Light with café	25	.02
Light with shower	20	.02
Light		
Hospitals	300	.34
Each patient (bedside)	100	.17
Each resident staff	20	.02
Each non-resident staff		
Hotels, boarding houses (Exclusive of restaurants, bars)	50	.15
per guest		
Industrial park (sanitary waste only)	500	.84
Per developable acre		
Institutions	70	.17
Per resident		
Laundry (coin operated)	400	1.34
Per machine		
Labor camps	50	
Per person		
Mine bath houses	15	.03
Per worker		

Facility Description	Unit Sewage Design Flow (gpd)	Unit Five-Day BOD (lbs/day)
Mobile homes Per mobile home	280	.68
Motels (exclusive or restaurant or bar) Per unit	80	.15
Nursing and rest homes Per resident Per resident staff	150 70	.26 .17
Offices and warehouses Per workers, no food service Add for food service, per worker	20 5	.03 .01
Recreation Parks, picnic areas, and beach areas Campground, per person Amphitheater, per person Historical site, per person Lodges, per person Park residences, per person Park washhouse, per person	10 25 5 5 70 70 30	.02 .05 .01 .01 .17 .17 .05
Restaurants 24-hour service, per seat Ordinary, not 24-hour service, per seat Curb service (drive-in), per car space Fast food (single service), per seat	50 30 50 25	.17 .10 .17 .06
Schools Elementary, each staff or student High school, each staff or student Boarding school	8 10 70	.02 .03 .17

Facility Description	Unit Sewage Design Flow (gpd)	Unit Five-Day BOD (lbs/day)
Service stations	500	.80
Ordinary, not 24-hour service	1000	1.60
24-hour service		
Shopping mall per 100 sq. ft.	15	.03
Shopping center Based on individual store occupancy		
Swimming pools	5	.01
Per swimmer	2	.01
Add for shower facilities, per swimmer		
Taverns and bars, little or no food service	20	.04
Per seat		
Theaters	4	.008
Drive-in, per car space	2	.004
Movie, per seat		
Travel Trailer Park (b)	35	.075
No water to site, per person	50	.10
Water to site, per person		
**Winery	2	.02
Per seat manufacture and sampling only	5	.04
Per seat with ABCA License allowing on site consumption by the glass ¹		
Disco/Dance Halls, per seat	5	.01
Beauty parlors/barber shops	150	.50
Per chair	20	.02
Per operator		
Dentist	200	.10
Per chair	20	.02
Per staff		
Doctor	5	.01
Per patient	20	.02
Per staff		

Facility Description	Unit Sewage Design Flow (gpd)	Unit Five-Day BOD (lbs/day)
(a) Assume four persons per residence (b) Assume three persons per travel trailer site *See subsections 5.1.d.3., 5.1.d.4., 5.1.d.5. ** A calculation should be based upon an average of winter (November – March) usage and summer (April – October) usage ¹ Requirement of the ABCA License is that there must be food offered for sale onsite by the facility or an outside food or mobile food vendor (NOTE 1: These factors do not apply to the design of municipal sewage systems. Refer to subsection 6.1. for design loadings for municipal sewage systems.) (NOTE 2: If proposed facilities are not listed in the table above, and average daily water usage data is available, a peaking factor of 2.5 shall be required.) (NOTE 3: Five-Day BOD, BOD₅ or BOD₅ is the scientific method used to accurately measure dissolved oxygen consumption, by comparison of dissolved oxygen in a sample at the beginning and at the end of a five-day period.)		

ARTICLE 5A. AUTHORIZATION FOR DEPARTMENT OF HUMAN SERVICES TO PROMULGATE LEGISLATIVE RULES.

§64-5A-1. Department of Human Services.

(a) The legislative rule filed in the State Register on September 13, 2024, authorized under the authority of §16-59-2 of this code, modified by the Department of Human Services to meet the

objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 26, 2024, relating to the Department of Human Services (Recovery Residence Certification and Accreditation Program, 69 CSR 15), is authorized with the amendments set forth below:

On page 6, subsection 6.4., after the period by inserting the words "The information regarding how to make a complaint with the Office of Health Facility Licensure and Certification and regarding human trafficking, as approved and provided by the Office of Health Facility Licensure and Certification on their website, shall be posted in a common area in each recovery residence."; On page 6, subdivision 6.5.5., by striking out the word "and";

On page 6, after subdivision 6.5.6., by adding two new subdivisions, designated as subdivision 6.5.7. and 6.5.8. to read as follows:

6.5.7. Disclose and list any other healthcare facility and recovery residence owned or managed by the applicant in any state in the United States; and

6.5.8. Disclose whether the applicant is part of any lawsuit or regulatory action in any state in the United States related to patient care, human trafficking, labor exploitation, or financial misconduct.;

On page 9, after subsection 6.16., by inserting two new subsections, designated as subsection 6.17. and subsection 6.18. to read as follows:

6.17. Resident Exit Survey

6.17.1. Upon discharge of a resident, the recovery residence shall provide to the discharged resident a link or QR code for the resident to be able to complete an exit survey in a form to be prescribed by the Office of Health Facility Licensure and Certification.

6.18. Referral of Complaints

6.18.1. The Office of Health Facility Licensure and Certification, the certifying agency, and the West Virginia Fusion Center may refer complaints and information received among each other and with law enforcement and criminal justice support agencies, as appropriate.;

And,

By renumbering the remaining subsections.

On page 11, subdivision 6.20.2., by striking out the words "certifying agency" and inserting in lieu thereof the word "Director";

And,

On pages 12 through 13, by striking out all of subsection 7.1. and inserting in lieu thereof a new subsection 7.1. to read as follows:

7.1. All recovery residences shall submit the following data to the Office of Health Facility Licensure and Certification as described in this section:

7.1.1. The state residency or citizenship of each individual resident;

7.1.2. Whether the resident is receiving medication-assisted treatment and the name of the treatment provider, along with any and all referral, profit sharing, or any other agreements between the participant, recovery residence, or provider, or any combination thereof;

7.1.3. The specific source of all referrals the recovery residence received;

7.1.4. The number of hours the resident volunteered or worked for any business, organization, or other entity that is owned, in whole or in part, or affiliated with the recovery residence, any parent company, or employee, as a condition or part of the resident's stay at the recovery residence, the hourly rate the

resident is paid for any such work, and the total amount of payments or benefits received from the resident's work;

7.1.5. The monthly rent the resident paid, any rent paid by a third party or outside source, and any rent reductions, including but not limited to, no rent or deferred rent, the resident received for working or volunteering, or any other reasons;

7.1.6. The length of the resident's stay and, if known, where the resident went after leaving the residence, and reason the resident left;

7.1.7. Whether the resident is receiving any other behavioral health treatment and the name of the treatment provider, along with any and all referral, profit sharing, or any other agreements between the participant, recovery residence, or provider, or any combination thereof;

7.1.8. Retain copies of all leases or participation agreement or terms required of any participant that have been provided to new participants or signed by any participant during the reporting period, for five years after the resident leaves the recovery residence and make them available to the Office of Inspector General and Department of Human Services upon request;

7.1.9. Retain copies of any agreements for referrals, financial compensation, or any agreement between a recovery residence and a provider of treatment which have been in effect during the reporting period, for five years after the resident leaves the recovery residence and make them available to the Office of Inspector General and Department of Human Services upon request; and

7.1.10. Any other information the Director of the Office of Health Facility Licensure and Certification may require to analyze the performance of the recovery residence and determine if patient brokering, human trafficking, or other criminal activity is occurring.

(b) The legislative rule filed in the State Register on October 22, 2024, authorized under the authority of §9-3-6 of this code,

relating to the Department of Human Services (pilot program for drug screening of applicants for cash assistance, 78 CSR 26), is authorized.

(c) The Legislature directs the Department of Human Services to amend the legislative rule filed in the State Register on May 11, 2021, authorized under the authority of §49-2-121 of this code, relating to the Department of Human Services (child placing agencies licensure, 78 CSR 02), is authorized with the amendment set forth below:

On page 1, subsection 1.5. by striking out the number "2026" and inserting in lieu thereof the number "2031";

On page 29, by striking out all of paragraph 13.2.1.b.;

And,

Renumbering the remaining paragraphs accordingly.

ARTICLE 5B. AUTHORIZATION FOR OFFICE OF INSPECTOR GENERAL TO PROMULGATE LEGISLATIVE RULES.

§64-5B-1. Office of Inspector General.

(a) The legislative rule filed in the State Register on August 30, 2024, authorized under the authority of §16B-3-8 of this code, modified by the Office of Inspector General to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 26, 2024, relating to the Office of Inspector General (hospital licensure, 71 CSR 12), is authorized with the amendments set forth below:

On page 8, subdivision 3.7.2., by striking out the words "State Air Pollution Control Commission" and inserting in lieu thereof the words "Air Quality Board";

On page 9, paragraph 4.2.1.c., by striking out the number "11.2" and inserting in lieu thereof the number "11.9";

On page 15, subdivision 6.3.4., by striking out the word “sir” and inserting in lieu thereof the word “air”;

On page 18, subdivision 7.2.7., after the word “authorized” by inserting the word “personnel”;

And,

On page 28, subdivision 8.6.2., by striking out the word “personal” and inserting in lieu thereof the word “personnel”.

(b) The legislative rule filed in the State Register on August 30, 2024, authorized under the authority of §27-9-1 of this code, modified by the Office of Inspector General to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 26, 2024, relating to the Office of Inspector General (Behavioral Health Centers Licensure, 71 CSR 25), is authorized with the amendments set forth below:

On page 15, by striking out all of paragraph 5.1.1.o. and renumbering the remaining paragraph;

And,

On page 18, by striking out all of subdivision 6.2.2. and inserting in lieu thereof a new subdivision 6.2.2. to read as follows:

6.2.2. Staff or contracted individuals transporting consumers in their own vehicles as part of their duties shall annually sign an affidavit to the provider on or before July 1, attesting to the status of their insurance and the vehicles they will be using for transporting consumers. The affidavit shall attest to the fact that the individual is properly insured in case of an automobile accident, that the vehicles to be used have a valid inspection sticker, and that the vehicles to be used are legally registered. The provider shall retain the affidavits in its records for a period of 5 years. A firearm may not be present in any vehicle used to transport a consumer.



CHAPTER 164

(Com. Sub. for S. B. 336 - By Senator Woodrum)

[Passed March 20, 2025; in effect from passage]

[Approved by the Governor on April 1, 2025.]

AN ACT to amend and reenact §64-6-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating to authorizing certain agencies of the Department of Homeland Security to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee; authorizing the Governor's Committee on Crime, Delinquency, and Correction to promulgate a legislative rule relating to the protocol for law-enforcement response to child abuse and neglect; authorizing the Governor's Committee on Crime, Delinquency, and Correction to promulgate a legislative rule relating to sexual assault forensic examinations; authorizing the Division of Protective Services to promulgate a legislative rule relating to the ranks and duties of officers within the membership of the division; authorizing the State Emergency Response Commission to promulgate a legislative rule relating to the Emergency Planning Grant Program; authorizing the West Virginia State Police to promulgate a legislative rule relating to cadet selection; and authorizing the West Virginia State Police to promulgate a legislative rule relating to the West Virginia State Police Career Progression System.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF
HOMELAND SECURITY TO PROMULGATE
LEGISLATIVE RULES.**

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

(a) The legislative rule filed in the State Register on August 28, 2024, authorized under the authority of §15-9-5 of this code, modified by the Governor's Committee on Crime, Delinquency, and Correction to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 20, 2024, relating to the Governor's Committee on Crime, Delinquency, and Correction (protocol for law-enforcement response to child abuse and neglect, 149 CSR 08), is authorized.

(b) The legislative rule filed in the State Register on September 9, 2024, authorized under the authority of §15-9B-4 of this code, modified by the Governor's Committee on Crime, Delinquency, and Correction to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 20, 2024, relating to the Governor's Committee on Crime, Delinquency, and Correction (sexual assault forensic examinations, 149 CSR 11), is authorized.

§64-6-2. Division of Protective Services.

The legislative rule filed in the State Register on August 28, 2024, authorized under the authority of §15-2D-3 of this code, relating to the Division of Protective Services (ranks and duties of officers within the membership of the division, 99 CSR 02), is authorized.

§64-6-3. State Emergency Response Commission.

The legislative rule filed in the State Register on August 29, 2024, authorized under the authority of §15-5A-5 of this code, modified by the State Emergency Response Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 1, 2024, relating to the State Emergency Response Commission (Emergency Planning Grant Program, 55 CSR 02), is authorized.

§64-6-4. West Virginia State Police.

(a) The legislative rule filed in the State Register on August 28, 2024, authorized under the authority of §15-2-25 of this code, modified by the West Virginia State Police to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 1, 2024, relating to the West Virginia State Police (cadet selection, 81 CSR 02), is authorized with the following amendment:

On page 2, subdivision 3.2.11, by striking out the words “for two years”.

(b) The legislative rule filed in the State Register on August 28, 2024, authorized under the authority of §15-2-5 of this code, modified by the West Virginia State Police to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 1, 2024, relating to the West Virginia State Police (West Virginia State Police Career Progression System, 81 CSR 03), is authorized.



CHAPTER 165

(Com. Sub. for S. B. 358 - By Senator Woodrum)

[Passed March 12, 2025; in effect from passage]

[Approved by the Governor on March 20, 2025.]

AN ACT to amend and reenact §64-8-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating to authorizing certain agencies of the Department of Transportation to promulgate legislative rules; authorizing the rules as modified and as filed by the Legislative Rule-Making Review Committee; authorizing the Division of Highways to promulgate a legislative rule relating to the construction and reconstruction of state roads; authorizing the Division of Highways to promulgate a legislative rule relating to the use of state road rights-of-way and adjacent areas; authorizing the Division of Highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways; authorizing the Division of Highways to promulgate a legislative rule relating to small wireless facilities on Division of Highways rights-of-way; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the denial, suspension, revocation, disqualification, restriction, non-renewal, cancellation, administrative appeals, and reinstatement of driving privileges; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to disclosure of information from the files of the Division of Motor Vehicles; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to handicapped placards; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the safety and treatment program; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the State Vehicle Title, Registration, and Relicensing Project of 2018; and authorizing the Parkways

Authority to promulgate a legislative rule relating to electronic toll collection and enforcement.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF
TRANSPORTATION TO PROMULGATE LEGISLATIVE
RULES.**

§64-8-1. Division of Highways.

(a) The legislative rule filed in the State Register on August 27, 2024, authorized under the authority of §17-2A-8 of this code, modified by the Division of Highways to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 11, 2024, relating to the Division of Highways (construction and reconstruction of state roads, 157 CSR 03), is authorized.

(b) The legislative rule filed in the State Register on August 9, 2024, authorized under the authority of §17-2A-8 of this code, relating to the Division of Highways (use of state rights-of-way and adjacent areas, 157 CSR 06), is authorized.

(c) The legislative rule filed in the State Register on July 23, 2024, authorized under the authority of §22-18-7 of this code, relating to the Division of Highways (transportation of hazardous wastes upon the roads and highways, 157 CSR 07), is authorized.

(d) The legislative rule filed in the State Register on July 23, 2024, authorized under the authority of §31H-2-3 of this code, relating to the Division of Highways (small wireless facilities on Division of Highways rights-of-way, 157 CSR 13), is authorized.

§64-8-2. Division of Motor Vehicles.

(a) The legislative rule filed in the State Register on August 14, 2024, authorized under the authority of §17A-2-9 of this code, modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 2, 2024, relating to the Division of

Motor Vehicles (denial, suspension, revocation, disqualification, restriction, non-renewal, cancellation, administrative appeals, and reinstatement of driving privileges, 91 CSR 05), is authorized with the following amendment:

On page 6, after subsection 6.4. by adding a new subsection 6.5. to read as follows:

6.5. Credit for revocation/suspension served: In the event that a state or jurisdiction neglects to provide a conviction to West Virginia within a sufficient time to assess a revocation or suspension period required by this state concurrently with the revocation or suspension period assessed by the state or jurisdiction where the offense occurred and upon the request of a non-commercial license holder, the Division, after confirming the proof submitted by the driver, may provide credit for any license revocation or suspension period served that was imposed by the state or jurisdiction where the offense occurred in order to satisfy all or a portion of a revocation or suspension period required by this State for a West Virginia non-commercial drivers license holder, unless prohibited by federal law. Evidence that a person requesting relief under this provision drove during the period for which credit is sought shall be treated as if the person drove while the license was suspended or revoked by this State.

(b) The legislative rule filed in the State Register on August 14, 2024, authorized under the authority of §17D-2-2 of this code, modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2024, relating to the Division of Motor Vehicles (disclosure of information from the files of the Division of Motor Vehicles, 91 CSR 08), is authorized.

(c) The legislative rule filed in the State Register on August 14, 2024, authorized under the authority of §17C-13-6 of this code, modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 2, 2024, relating to the Division of Motor Vehicles (handicapped placards, 91 CSR 10), is authorized.

(d) The legislative rule filed in the State Register on August 14, 2024, authorized under the authority of §17C-5A-3 of this code, relating to the Division of Motor Vehicles (Safety and Treatment Program, 91 CSR 15), is authorized.

(e) The legislative rule filed in the State Register on August 14, 2024, authorized under the authority of §17A-3-25 of this code, relating to the Division of Motor Vehicles (State Vehicle Title, Registration and Relicensing Project of 2018, 91 CSR 24), is authorized.

§64-8-3. Parkways Authority.

The legislative rule filed in the State Register on July 31, 2024, authorized under the authority of §17-16D-14 of this code, modified by the Parkways Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 11, 2024, relating to the Parkways Authority (supporting electronic toll collection and enforcement, 184 CSR 05), is authorized.



CHAPTER 166

(Com. Sub. for S. B. 369 - By Senator Woodrum)

[Passed April 4, 2025; in effect from passage]

[Approved by the Governor on April 29, 2025.]

AN ACT to amend and reenact §64-9-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating to authorizing certain miscellaneous agencies and boards to promulgate legislative rules; authorizing the rules as filed, as modified, and as amended by the Legislative Rule-Making Review Committee, and as amended by the Legislature; authorizing the Department of Agriculture to promulgate a legislative rule relating to state aid for fairs and festivals; authorizing the Department of Agriculture to promulgate a legislative rule relating to the inspection of meat and poultry; authorizing the Department of Agriculture to promulgate a legislative rule relating to licensing and other fees; authorizing the Department of Agriculture to promulgate a legislative rule relating to manufacture-grade milk; authorizing the Department of Agriculture to promulgate a legislative rule relating to employment reference and inquiries and background checks; authorizing the Department of Agriculture to promulgate a legislative rule relating to fish processing; authorizing the Department of Agriculture to promulgate a legislative rule relating to select plant-based derivatives and select plant-based derivative products; authorizing the Department of Agriculture to promulgate a legislative rule relating to the Rural Rehabilitation Program; authorizing the Department of Agriculture to promulgate a legislative rule relating to raw milk; authorizing the Board of Architects to promulgate a legislative rule relating to registration of architects; authorizing the Board of Architects to promulgate a legislative rule relating to fees for registration of architects; authorizing the State

Auditor to promulgate a legislative rule relating to Local Government Purchasing Card Program; authorizing the State Auditor to promulgate a legislative rule relating to private trust companies; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to the operation of barber, cosmetology, nail technology, aesthetic, hair styling, and waxing salons and schools; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to the schedule of fees; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to the schedule of fines; authorizing the Board of Chiropractic Examiners to promulgate a legislative rule relating to consideration of prior criminal convictions in initial licensure determinations; authorizing the Board of Dentistry to promulgate a legislative rule relating to continuing education requirements; authorizing the Board of Dentistry to promulgate a legislative rule relating to mobile dental facilities and portable dental units; authorizing the Election Commission to promulgate a legislative rule relating to the regulation of campaign finance; authorizing the Board of Funeral Service Examiners to promulgate a legislative rule relating to funeral director, embalmer, apprentice, courtesy card holders, and funeral establishment requirements; authorizing the Massage Therapy Licensure Board to promulgate a legislative rule relating to general provisions; authorizing the Board of Medicine to promulgate a legislative rule relating to waiver of initial licensing fees for certain initial licensure applicants; authorizing the Board of Occupational Therapy to promulgate a legislative rule relating to fees for services rendered by the board; authorizing the Board of Occupational Therapy to promulgate a legislative rule relating to competency standards for advanced practice by occupational therapists and occupational therapy assistants; authorizing the Board of Occupational Therapy to promulgate a legislative rule relating to request for waiver of licensing fees for certain individuals; authorizing the Board of Occupational Therapy to promulgate a legislative rule relating to consideration of prior criminal convictions in initial licensure determinations; authorizing the Board of Occupational Therapy to promulgate a legislative rule

relating to telehealth practice requirements and definitions; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to a waiver of initial licensing fees for certain initial licensure applicants; 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 the Uniform Controlled Substances Act; 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 the application of waiver of initial licensing fees for certain individuals; authorizing the Board of Examiners of Psychologists to promulgate a legislative rule relating to consideration of prior criminal convictions in initial licensure determinations and application for waiver of initial licensing fees for certain individuals; authorizing the Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to requirements for licensure and certification; authorizing the Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to renewal of licensure or certification; authorizing the Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to requirements for registration and renewal of appraisal management companies; authorizing the Real Estate Commission to promulgate a legislative rule relating to licensing real estate brokers, associate brokers, and salespersons and the conduct of brokerage business; authorizing the Real Estate Commission to promulgate a legislative rule relating to the application for waiver of initial licensing fees for certain individuals; authorizing the Real Estate Commission to promulgate a legislative rule relating to consideration of prior criminal convictions in initial license eligibility determination; authorizing the Board of Respiratory Care to promulgate a legislative rule relating to criteria for licensure; authorizing the Board of Respiratory Care to promulgate a legislative rule relating to consideration of prior criminal convictions in initial licensure determinations; authorizing the Board of Respiratory

Care to promulgate a legislative rule relating to telehealth practice requirements and definitions; authorizing the Board of Sanitarians to promulgate a legislative rule relating to the practice of public health sanitation; authorizing the Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to speech-language pathology and audiology assistants; authorizing the State Conservation Committee to promulgate a legislative rule relating to the State Conservation Committee Grant Program; and authorizing the Hope Scholarship Board to promulgate a legislative rule relating to the Hope Scholarship Program.

Be it enacted by the Legislature of West Virginia:

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

§64-9-1. Department of Agriculture.

(a) The legislative rule filed in the State Register on July 25, 2024, authorized under the authority of §19-7-11 of this code, relating to the Department of Agriculture (state aid for fairs and festivals, 61 CSR 03), is authorized.

(b) The legislative rule filed in the State Register on June 25, 2024, authorized under the authority of §19-2B-3 of this code, relating to the Department of Agriculture (inspection of meat and poultry, 61 CSR 16), is authorized.

(c) The legislative rule filed in the State Register on July 25, 2024, authorized under the authority of §19-1-4b of this code, relating to the Department of Agriculture (licensing and other fees, 61 CSR 18), is authorized.

(d) The legislative rule filed in the State Register on August 2, 2024, authorized under the authority of §19-11E-8 of this code, modified by the Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 18, 2024, relating to the Department

of Agriculture (West Virginia manufacture-grade milk, 61 CSR 19), is authorized.

(e) The legislative rule filed in the State Register on August 6, 2024, authorized under the authority of §19-1-3b of this code, modified by the Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 16, 2024, relating to the Department of Agriculture (employment reference and inquiries and background checks, 61 CSR 20), is authorized with amendment set forth below:

On page 5, by striking out all of subsection 9.1. and inserting in lieu thereof a new subsection 9.1. to read as follows:

9.1. The following provisions apply to current employees and individuals seeking employment at the WVDA who have not been previously employed by the Department.;

On page 5, paragraph 9.1.a.4., after the word “his” by inserting the words “or her”;

And,

On page 5, subdivision 9.1.b., after the word “or” by inserting the word “an”.

(f) The legislative rule filed in the State Register on July 30, 2024, authorized under the authority of §19-29-1 of this code, modified by the Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 2, 2024, relating to the Department of Agriculture (West Virginia fish processing, 61 CSR 23A), is authorized with amendment set forth below:

On page 19, by adding a new subsection designated 21.4. to read as follows:

“21.4. Up to 20,000 pounds of fish per calendar year slaughtered and/or processed at an official plant are exempt from the antemortem, postmortem, and processing inspection, provided

that the fish are slaughtered and processed at an establishment licensed by the Commissioner of Agriculture and approved for fish slaughter operations.”

(g) The legislative rule filed in the State Register on August 15, 2024, authorized under the authority of §19-12E-12 of this code, modified by the Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 3, 2024, relating to the Department of Agriculture (select plant-based derivatives and select plant-based derivative products, 61 CSR 30), is authorized with the amendment set forth below:

On page 20, subdivision 13.3.c. after the word “hemp” by inserting the words “and kratom”.

(h) The legislative rule filed in the State Register on July 29, 2024, authorized under the authority of §19-1-11 of this code, relating to the Department of Agriculture (Rural Rehabilitation Program, 61 CSR 33), is authorized.

(i) The legislative rule filed in the State Register on August 15, 2024, authorized under the authority of §19-1-7 of this code, modified by the Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 2, 2024, relating to the Department of Agriculture (raw milk, 61 CSR 41), is authorized.

§64-9-2. Board of Architects.

(a) The legislative rule filed in the State Register on August 2, 2024, authorized under the authority of §30-12-1 of this code, modified by the Board of Architects to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 28, 2024, relating to the Board of Architects (registration of architects, 2 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on August 13, 2024, authorized under the authority of §31I-1-13 of this code, modified by the State Auditor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the

State Register on October 17, 2024, relating to the State Auditor (private trust companies, 155 CSR 12), is authorized with the following amendment:

On page 1, by striking out all of subsection 1.6. and inserting in lieu thereof a new subsection 1.6. to read as follows:

1.6. Confidentiality. – Notwithstanding any provision to the contrary in Chapter 29B of the W. Va. Code, none of the following, which are submitted as part of any application for licensure under this Title, shall be subject to disclosure under the provisions of the Freedom of Information Act of the State of West Virginia or otherwise: any Form WVSAO-PTC-Bio, "Biographical Report," incorporated by reference in W. Va. Code R. 155-12-9.6, provided as Exhibit E or F to Form WVSAO-PTC-01 or otherwise; any list of Family Members or list of current or former employees provided as Exhibit H to Form WVSAO-PTC-01 or otherwise; and any Genealogical Chart provided as Exhibit I to Form WVSAO-PTC-01 or otherwise.

§64-9-3. State Auditor.

(a) The legislative rule filed in the State Register on March 22, 2024, authorized under the authority of §6-9-2a of this code, relating to the State Auditor (Local Government Purchasing Card Program, 155 CSR 06), is authorized.

(b) The legislative rule filed in the State Register on August 13, 2024, authorized under the authority of §31I-1-13 of this code, modified by the State Auditor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 17, 2024, relating to the State Auditor (private trust companies, 155 CSR 12), is authorized.

§64-9-4. Board of Barbers and Cosmetologists.

(a) The legislative rule filed in the State Register on August 14, 2024, authorized under the authority of §30-27-6 of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 10, 2024, relating to the

Board of Barbers and Cosmetologists (operation of barber, cosmetology, nail technology, aesthetic, hair styling, and waxing salons and schools, 3 CSR 05), is authorized.

(b) The legislative rule filed in the State Register on August 20, 2024, authorized under the authority of §30-27-6 of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 11, 2024, relating to the Board of Barbers and Cosmetologists (schedule of fees, 3 CSR 06), is authorized.

(c) The legislative rule filed in the State Register on August 20, 2024, authorized under the authority of §30-1-8 of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 8, 2024, relating to the Board of Barbers and Cosmetologists (schedule of fines, 3 CSR 07), is authorized.

§64-9-5. Board of Chiropractic Examiners.

The legislative rule filed in the State Register on October 18, 2024, authorized under the authority of §30-1-24 of this code, relating to the Board of Chiropractic Examiners (consideration of prior criminal convictions in initial licensure determinations, 4 CSR 08), is authorized.

§64-9-6. Board of Dentistry.

(a) The legislative rule filed in the State Register on July 23, 2024, authorized under the authority of §30-4-6 of this code, modified by the Board of Dentistry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 15, 2024, relating to the Board of Dentistry (continuing education requirements, 5 CSR 11), is authorized with the amendment set forth below:

“On page 8, subdivision 3.9.2., after the word “least”, by striking out the number “3” and inserting in lieu thereof the number “2”;

And,

On page 8, subdivision 3.9.2., by striking out the following “drug diversion training and best practice prescribing of controlled substances training and training on prescribing and administration of an opioid antagonist “ and inserting in lieu thereof “infection control training”.”

(b) The legislative rule filed in the State Register on July 22, 2024, authorized under the authority of §30-4-6 of this code, modified by the Board of Dentistry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 15, 2024, relating to the Board of Dentistry (mobile dental facilities and portable dental units, 5 CSR 14), is authorized.

§64-9-7. Election Commission.

The legislative rule filed in the State Register on August 30, 2024, authorized under the authority of §3-1A-5 of this code, modified by the Election Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 3, 2025, relating to the Election Commission (regulation of campaign finance, 146 CSR 03), is authorized with the amendments set forth below:

On page 6, by striking out all of paragraph 2.28.2.e.;

On page 13, subsection 6.5. by striking out the words "or candidate's leadership PAC"

On page 22, subdivision 13.2.1. by striking out the words "including a leadership PAC";

And,

On page 28, by striking out all of subsection 14.8. and inserting in lieu there of a new subsection 14.8. to read as follows:

14.8. Candidate PAC Activities; Prohibitions:

14.8.1. A candidate seeking or an individual holding statewide or legislative office may:

14.8.1.a. Be the principal officer, treasurer, fundraiser, or decision maker for a PAC;

14.8.1.b. Receive contributions to the PAC: *Provided*, that contributions received are subject to the contribution limitations in W. Va. Code § 3-8-5c and the regulation of coordinated expenditures in W. Va. Code § 3-8-9a and subsection 14.2 of this Section;

14.8.1.c. Receive reimbursement for travel and other expenses incurred in the performance of duties for the PAC, and for purchases made on behalf of the PAC: *Provided*, that no reimbursement shall be made for any activities that would constitute personal use or prohibited expenditures; and

14.8.1.d. Sponsor another candidate or individual holding statewide or legislative office for non-campaign political activities as follows:

14.8.1.d.1. For political events not specifically organized for any candidate's committee or campaign, political party events, political meetings, and expenses related thereto such as necessary travel, hotels, meals, and entry fees.

§64-9-8. Board of Funeral Service Examiners.

The legislative rule filed in the State Register on August 29, 2024, authorized under the authority of §30-6-6 of this code, modified by the Board of Funeral Service Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 22, 2024, relating to the Board of Funeral Service Examiners (funeral director, embalmer, apprentice, courtesy card holders, and funeral establishment requirements, 6 CSR 01), is authorized.

§64-9-9. Massage Therapy Licensure Board.

The legislative rule filed in the State Register on August 30, 2024, authorized under the authority of §30-37-6 of this code,

relating to the Massage Therapy Licensure Board (general provisions, 194 CSR 01), is authorized.

§64-9-10. Board of Medicine.

The legislative rule filed in the State Register on April 1, 2024, authorized under the authority of §30-1-23 of this code, relating to the Board of Medicine (waiver of initial licensing fees for certain initial licensure applicants, 11 CSR 13), is authorized.

§64-9-11. Board of Occupational Therapy.

(a) The legislative rule filed in the State Register on June 4, 2024, authorized under the authority of §30-28-7 of this code, relating to the Board of Occupational Therapy (fees for services rendered by the Board, 13 CSR 03), is authorized.

(b) The legislative rule filed in the State Register on June 4, 2024, authorized under the authority of §30-28-7 of this code, modified by the Board of Occupational Therapy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 29, 2024, relating to the Board of Occupational Therapy (competency standards for advanced practice by occupational therapists and occupational therapy assistants, 13 CSR 05), is authorized.

(c) The legislative rule filed in the State Register on January 10, 2024, authorized under the authority of §30-28-6 of this code, relating to the Board of Occupational Therapy (request for waiver of licensing fees for certain individuals, 13 CSR 07), is authorized.

(d) The legislative rule filed in the State Register on January 10, 2024, authorized under the authority of §30-28-7 of this code, modified by the Board of Occupational Therapy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 29, 2024, relating to the Board of Occupational Therapy (consideration of prior criminal convictions in initial licensure determinations, 13 CSR 08), is authorized.

(e) The legislative rule filed in the State Register on June 4, 2024, authorized under the authority of §30-1-26 of this code, modified by the Board of Occupational Therapy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 29, 2024, relating to the Board of Occupational Therapy (telehealth practice, requirements, and definitions, 13 CSR 09), is authorized.

§64-9-12. Board of Osteopathic Medicine.

The legislative rule filed in the State Register on November 15, 2023, authorized under the authority of §30-1-23 of this code, relating to the Board of Osteopathic Medicine (waiver of initial licensing fees for certain initial licensure applicants, 24 CSR 08), is authorized.

§64-9-13. Board of Pharmacy.

(a) The legislative rule filed in the State Register on August 29, 2024, authorized under the authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 16, 2024, relating to the Board of Pharmacy (licensure and practice of pharmacy, 15 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on August 29, 2024, authorized under the authority of §60A-3-301 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 16, 2024, relating to the Board of Pharmacy (Uniform Controlled Substances Act, 15 CSR 02), is authorized.

(c) The legislative rule filed in the State Register on August 29, 2024, authorized under the authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 16, 2024, relating to the Board of

Pharmacy (regulations governing pharmacy permits, 15 CSR 15), is authorized.

(d) The legislative rule filed in the State Register on July 24, 2024, authorized under the authority of §30-1-23 of this code, relating to the Board of Pharmacy (application of waiver of initial licensing fees for certain individuals, 15 CSR 18), is authorized.

§64-9-14. Board of Examiners of Psychologists.

The legislative rule filed in the State Register on August 13, 2024, authorized under the authority of §30-21-6 of this code, modified by the Board of Examiners of Psychologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 28, 2024, relating to the Board of Examiners of Psychologists (consideration of prior criminal convictions in initial licensure determinations and application for waiver of initial licensing fees for certain individuals, 17 CSR 07), is authorized.

§64-9-15. Real Estate Appraiser Licensing and Certification Board.

(a) The legislative rule filed in the State Register on August 30, 2024, authorized under the authority of §30-38-9 of this code, modified by the Real Estate Appraiser Licensing and Certification Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 7, 2024, relating to the Real Estate Appraiser Licensing and Certification Board (requirements for licensure and certification, 190 CSR 02), is authorized.

(b) The legislative rule filed in the State Register on August 30, 2024, authorized under the authority of §30-38-9 of this code, modified by the Real Estate Appraiser Licensing and Certification Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 7, 2024, relating to the Real Estate Appraiser Licensing and Certification Board (renewal of licensure or certification, 190 CSR 03), is authorized.

(c) The legislative rule filed in the State Register on August 30, 2024, authorized under the authority of §30-38-9 of this code, modified by the Real Estate Appraiser Licensing and Certification Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 7, 2024, relating to the Real Estate Appraiser Licensing and Certification Board (requirements for registration and renewal of appraisal management companies, 190 CSR 05), is authorized.

§64-9-16. Real Estate Commission.

(a) The legislative rule filed in the State Register on August 14, 2024, authorized under the authority of §30-40-8 of this code, modified by the Real Estate Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 15, 2024, relating to the Real Estate Commission (licensing real estate brokers, associate brokers, and salespersons and the conduct of brokerage business, 174 CSR 01), is authorized with the amendment set forth below:

On page 2, subsection 3.1., by striking out the word “biannual” and inserting in lieu thereof the word “biennial”.

(b) The legislative rule filed in the State Register on June 27, 2024, authorized under the authority of §30-1-23 of this code, relating to the Real Estate Commission (application for waiver of initial licensing fees for certain individuals, 174 CSR 06), is authorized with the amendment set forth below:

On page 2, subdivision 2.7. by striking out “§30-1-22” and inserting in lieu thereof “§30-01-23”.

(c) The legislative rule filed in the State Register on August 9, 2024, authorized under the authority of §30-1-24 of this code, relating to the Real Estate Commission (consideration of prior criminal convictions in initial license eligibility determination, 174 CSR 07), is authorized.

§64-9-17. Board of Respiratory Care.

(a) The legislative rule filed in the State Register on August 30, 2024, authorized under the authority of §30-34-6 of this code,

relating to the Board of Respiratory Care (criteria for licensure, 30 CSR 01), is authorized with the amendments set forth below:

On page 1, by striking out all of subsection 2.4.;

On page 1, paragraph 3.1.2., by striking out the words "On or after July 1, 2022 holds" and inserting in lieu thereof the word "Holds".;

On page 1, paragraph 3.1.3., by striking out the words "Prior to July 1, 2022 holds" and inserting in lieu thereof the word "Holds".;

On page 2, subsection 3.3, by deleting the subsection in its entirety.;

On page 2, subsection 4.1, after the words "Respiratory therapists" by striking out the words "licensed prior to July 1, 2022,".;

And,

On page 2, subsection 4.2, by striking out the subsection in its entirety.

(b) The legislative rule filed in the State Register on February 27, 2024, authorized under the authority of §30-1-23 of this code, modified by the Board of Respiratory Care to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 9, 2024, relating to the Board of Respiratory Care (consideration of prior criminal convictions in initial licensure determinations, 30 CSR 10), is authorized.

(c) The legislative rule filed in the State Register on January 26, 2024, authorized under the authority of §30-1-26 of this code, modified by the Board of Respiratory Care to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 9, 2024, relating to the Board of Respiratory Care (telehealth practice requirements and definitions, 30 CSR 11), is authorized with the amendment set forth below:

On page 2, subdivision 5.2.4. by striking out the word "statue" and inserting in lieu thereof the word "statute";

And,

On page 3, after "§30-11-6." by inserting the words "Authorized Procedures."

§64-9-18. Board of Sanitarians.

The legislative rule filed in the State Register on August 30, 2024, authorized under the authority of §30-17-6 of this code, modified by the Board of Sanitarians to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 18, 2024, relating to the Board of Sanitarians (the practice of public health sanitation, 20 CSR 04), is authorized.

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

The legislative rule filed in the State Register on July 22, 2024, authorized under the authority of §30-32-7 of this code, modified by the Board of Examiners for Speech-Language Pathology and Audiology to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 14, 2024, relating to the Board of Examiners for Speech-Language Pathology and Audiology (speech-language pathology and audiology assistants, 29 CSR 02), is authorized.

§64-9-20. State Conservation Committee.

The legislative rule filed in the State Register on October 30, 2023, authorized under the authority of §19-21A-4 of this code, relating to the State Conservation Committee (State Conservation Committee grant program, 63 CSR 03), is authorized.

§64-9-21. Hope Scholarship Board.

The legislative rule filed in the State Register on August 9, 2024, authorized under the authority of §18-31-9 of this code, modified by the Hope Scholarship Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 20, 2024, relating to the Hope Scholarship Board (Hope Scholarship Program, 112 CSR 18), is authorized.



CHAPTER 167

(Com. Sub. for H. B. 2222 - BY Delegate D. Smith)

[Passed March 18, 2025; in effect from passage]

[Approved by the Governor on March 26, 2025.]

AN ACT to amend and reenact §64-2-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating to authorizing certain agencies of 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 the administration of records management and preservation; authorizing the Department of Administration to promulgate a legislative rule relating to retention and disposal scheduling; authorizing the Department of Administration to promulgate a legislative rule relating to the management of records maintained by the Records Center; authorizing the Department of Administration to promulgate a legislative rule relating to exemptions from management services provided by the Fleet Management Division; authorizing the Department of Administration to promulgate a legislative rule relating to financial services reporting; authorizing the Information Services and Communications Division to promulgate a legislative rule relating to the plan of operation; authorizing the Information Services and Communications Division to promulgate a legislative rule relating to telecommunications payments made by state spending units; authorizing the Office of Technology to promulgate a legislative rule relating to the plan of operation; authorizing the Office of Technology to promulgate a legislative rule relating to telecommunications payments made by state spending units; authorizing Public Defender Services

to promulgate a rule relating to the payment of fees and reimbursement of expenses of court-appointed attorneys.

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.

(a) The legislative rule filed in the State Register on March 27, 2024, authorized under the authority of §5A-8-8 of this code, relating to the Department of Administration (general administration of records management and preservation, 148 CSR 12), is authorized.

(b) The legislative rule filed in the State Register on March 27, 2024, authorized under the authority of §5A-8-8 of this code, relating to the Department of Administration (retention and disposal scheduling, 148 CSR 13), is authorized.

(c) The legislative rule filed in the State Register on March 27, 2024, authorized under the authority of §5A-8-8 of this code, relating to the Department of Administration (management of records maintained by the Records Center, 148 CSR 14), is authorized.

(d) The legislative rule filed in the State Register on April 30, 2024, authorized under the authority of §5A-12-9 of this code, relating to the Department of Administration (exemptions from management services provided by the Fleet Management Division, 148 CSR 23), is authorized.

(e) The legislative rule filed in the State Register on March 11, 2024, authorized under the authority of §5A-2B-2 of this code, relating to the Department of Administration (financial services reporting, 148 CSR 24), is authorized.

§64-2-2. Information Services and Communications Division.

(a) The legislative rule filed in the State Register on November 12, 2024, authorized under the authority of §5A-7-2 of this code, relating to the Information Services and Communications Division (plan of operation, 161 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on November 12, 2024, authorized under the authority of §5A-7-4 of this code, relating to the Information Services and Communications Divisions (telecommunications payments made by state spending units, 161 CSR 02), is authorized.

§64-2-3. Office of Technology.

(a) The legislative rule filed in the State Register on August 29, 2024, authorized under the authority of §5A-6-4 of this code, modified by the Office of Technology to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 11, 2024, relating to the Office of Technology (plan of operation, 163 CSR 04), is authorized.

(b) The legislative rule filed in the State Register on August 29, 2024, authorized under the authority of §5A-6-4 of this code, modified by the Office of Technology to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 11, 2024, relating to the Office of Technology (telecommunications payments made by state spending units, 163 CSR 05), is authorized.

§64-2-4. Public Defender Services.

The legislative rule filed in the State Register on August 19, 2024, authorized under the authority of §29-21-5 of this code, relating to the Public Defender Services (payment of fees and reimbursement of expenses of court-appointed attorneys, 89 CSR 01), is authorized.



CHAPTER 168

(Com. Sub. for H. B. 2233 - By Delegate D. Smith)

[Passed April 4, 2025; in effect from passage]

[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §64-3-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating to authorizing certain agencies of the Department of Environmental Protection to promulgate legislative rules; authorizing the rules as filed, as modified, and as amended by the Legislative Rule-Making Review Committee, and as amended by the Legislature; directing the Department of Environmental Protection to amend current legislative rules; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the hazardous waste management system; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage, and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the emissions standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the requirements governing water quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the underground injection control; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the water pollution control permit fee

schedules; and directing the Department of Environmental Protection to amend a legislative rule relating to the National Pollutant Discharge Elimination System (NPDES) Program.

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.

(a) The legislative rule filed in the State Register on August 28, 2024, authorized under the authority of §22-18-6 of this code, relating to the Department of Environmental Protection (hazardous waste management system, 33 CSR 20), is authorized.

(b) The legislative rule filed in the State Register on August 23, 2024, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (ambient air quality standards, 45 CSR 08), is authorized.

(c) The legislative rule filed in the State Register on August 23, 2024, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (standards of performance for new stationary sources, 45 CSR 16), is authorized.

(d) The legislative rule filed in the State Register on August 23, 2024, authorized under the authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 18, 2024, relating to the Department of Environmental Protection (control of air pollution from hazardous waste treatment, storage, and disposal facilities, 45 CSR 25), is authorized.

(e) The legislative rule filed in the State Register on August 23, 2024, authorized under the authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee

and refiled in the State Register on November 18, 2024, relating to the Department of Environmental Protection (emission standards for hazardous air pollutants, 45 CSR 34), is authorized.

(f) The legislative rule filed in the State Register on August 29, 2024, authorized under the authority of §22-11-4 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 21, 2024, relating to the Department of Environmental Protection (requirements governing water quality standards, 47 CSR 02), is authorized with the amendments set forth below:

On page 8, following subdivision 6.2.4. by adding a new subdivision designated 6.2.5. to read as follows:

6.2.5. Category A is a non-101(a)(2) use designation as defined by EPA Water Quality Standards 40 CFR 131.3(q) which can be considered for removal based on submitted documentation demonstrating surface waters are without the capacity or are of limited capacity to reliably and continually support the public water supply use.

6.2.5.a. A use and value demonstration to remove this use must supply sufficient information to support the conditions identified in sections 6.1.2.b. or 6.1.2.c. Key additional information to be included is confirmation that the public water supply is not an existing use (e.g., there is no evidence that the water body is used for this purpose); the nearby population uses an alternative drinking water supply; and the current supply is sufficient to accommodate reasonably anticipated future growth.

6.2.5.b. Although a use and value demonstration does not require an evaluation of factors affecting attainability, a use attainability analysis (UAA) as required for federally protected uses may be submitted for consideration to determine Category A removal.

6.2.5.c. Removal of Category A must still be protective of downstream uses consistent with CWA Section 303(c)(2)(a).

6.2.5.d. Any Category A use removal proposed in accordance with this subsection will be subject to a 45 day public comment period and a public hearing and submitted to EPA for approval. Upon U.S. EPA approval, the removal will become effective for permitting and compliance purposes and added to the Department's Water Quality Standards website under Modifications to Water Quality Standards – Site Specific Criteria, and shall be promulgated as an emergency rule according to §29A-3-1 *et seq.* of this code;

And,

On page 43, by striking out all of subdivision 8.13.1. and inserting in lieu thereof a new subdivision 8.13.1. to read as follows:

8.13.1. Ohio River main stem (zone 1) – During the non-recreational season (November through April only) the maximum allowable level of fecal coliform for the Ohio River (either MPN or MF) shall not exceed 2000 /100 ml as a monthly geometric mean based on not less than 5 samples per month.

(g) The legislative rule filed in the State Register on April 5, 2024, authorized under the authority of §22-11-8 of this code, relating to the Department of Environmental Protection (underground injection control, 47 CSR 13), is authorized with the amendments set forth below:

On page 2, subdivision 1.2, immediately following the citation “W. Va. Code §22-11-8(B)(7)” by inserting the following: “and §22-11B-3”;

On page 41, by striking out all of subdivision 12.4.1. and inserting in lieu thereof a new subdivision 12.4.1. to read as follows:

12.4.1. Certain Class 5 wells may be authorized by rule pursuant to subsection 14.2. unless the Director requires an individual permit.;

On page 59, by striking out all of paragraph 14.2.1.b. and renumbering the remaining paragraph.;

And,

On page 82, by striking out the entirety of 14.13. and inserting in lieu thereof a new subsection 14.13. to read as follows:

14.13. Duration of Permits. UIC permits for Class 1 and 5 wells shall be effective for a fixed term not to exceed 10 years. UIC permits for Class 2 and 3 wells shall be issued for a period up to the operating life of the facility. UIC permits for Class 6 wells shall be issued for the operating life of the facility and the post-injection site care period. The Director shall review each issued Class 2, 3, and 6 well UIC permit at least once every 5 years to determine whether it should be modified, revoked and reissued, terminated or a minor modification made.

(h) The legislative rule filed in the State Register on August 29, 2024, authorized under the authority of §22-11-10 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 21, 2024, relating to the Department of Environmental Protection (water pollution control permit fee schedules, 47 CSR 26), is authorized.

(i) The Legislature directs the Department of Environmental Protection to amend the legislative rule filed in the State Register on May 1, 2012, authorized under the authority of §22-11-4 of this code, relating to the Department of Environmental Protection (National Pollutant Discharge Elimination System (NPDES) Program, 47 CSR 10), with the amendments set forth below:

On page 9, after paragraph 3.6.f.2. by adding a new subsection designated 3.7. to read as follows:

3.7. It is the intention of the Director to re-issue permits before the termination of the existing permit. Accordingly, absent agreement of the permittee to an alternative schedule, notice of the draft permit and fact sheet shall be provided to the public in accordance with subdivision 10.1.d. and section 12 of this rule, no less than three months prior to the termination date, with final permit re-issuance a month prior to permit termination: *Provided*, That an administratively complete application is received 210 days prior to the expiration date of the permit.;

On page 30, after subdivision 7.9.c., by adding a new subsection designated 7.10. to read as follows:

7.10. At the request of the permittee, the Director shall develop alternative permit limits and conditions for alternative operating scenarios or conditions that are reasonably likely to occur and are identified by the permit applicant.;

On page 33, by striking out all of paragraph 9.2.b.1. and inserting in lieu thereof a new paragraph 9.2.b.1. to read as follows:

9.2.b.1. Alterations. There are material and substantial alterations or additions to the permitted facility or activity that justify the application of permit conditions that are different or absent in the existing permit, including the acceptance of wastes from an indirect discharger pursuant to section 14 of this rule. Alterations or additions to a facility's equipment or activities that do not result in the discharge of a new pollutant, or in concentrations or amounts that are greater than allowed in the permit, are not material or substantial and do not require modification.;

On page 36, after subdivision 9.5.k., by adding a new subsection designated 9.6. to read as follows:

9.6. Permits that have exceeded their stated term and have been extended pending re-issuance may be modified in accordance with this section.;

And,

On page 37, after subdivision 10.1.d., by inserting a new subdivision designated 10.1.e. to read as follows:

10.1.e. All draft permits and fact sheets for individual NPDES permits shall be made available to the permittee at least 10 business days prior to being publicly noticed in accordance with subsection 3.7. of this rule, unless such opportunity for review is expressly waived by the permittee. The Director or the Director's designee shall meet with any permittee to discuss the draft permit at the request of the permittee before issuing the draft permit.



CHAPTER 169

(Com. Sub. for H. B. 2267 - By Delegate D. Smith)

[Passed April 12, 2025; in effect from passage]

[Approved by the Governor on April 28, 2025.]

AN ACT to amend and reenact §64-7-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating to authorizing certain agencies of the Department of Revenue to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Alcohol Beverage Control Administration to promulgate a legislative rule relating to private clubs; authorizing the Alcohol Beverage Control Administration to promulgate a legislative rule relating to the sale of wine and hard cider; authorizing the Alcohol Beverage Control Administration to promulgate a legislative rule relating to tobacco products in vending machines; authorizing the Alcohol Beverage Control Administration to promulgate a legislative rule relating to distilleries, mini-distilleries, and micro-distilleries; authorizing the Alcohol Beverage Control Administration to promulgate a legislative rule relating to retail enforcement of select plant-based derivatives and derivative products, including hemp and kratom; authorizing the Alcohol Beverage Control Administration to promulgate a legislative rule relating to nonintoxicating beer licensing and operations procedures; authorizing the Insurance Commissioner to promulgate a legislative rule relating to Medicare Supplement Insurance; authorizing the Lottery Commission to promulgate a legislative rule relating to sports wagering; authorizing the Tax Division to promulgate a legislative rule relating to payment of taxes by electronic funds transfer; authorizing the Tax Division to promulgate a legislative rule relating to alternative resolution of tax disputes; authorizing the Tax

Division to promulgate a legislative rule relating to consumer sales and service and use tax for drugs, durable medical goods, mobility enhancing equipment and prosthetic devices per se exemption and motor vehicle per se exemption; and authorizing the Tax Division to promulgate a legislative rule relating to the exchange of information pursuant to written agreement.

Be it enacted by the Legislature of West Virginia:

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

§64-7-1. Alcohol Beverage Control Administration.

The legislative rule filed in the State Register on August 20, 2024, authorized under the authority of §60-7-10 of this code, relating to the Alcohol Beverage Control Administration (private club, 175 CSR 02), is authorized with the following amendment: On page 13, paragraph 2.30.9, after the words “(iv) canned or packaged food valued at least” by deleting “\$100” and inserting in lieu thereof “\$50”.

And,

On page 24, by striking out all of paragraph 3.2.1.a., and inserting in lieu thereof a new paragraph 3.2.1.a. to read as follows:

3.2.1.a. That is located on any college campus, state university campus, or branch thereof, unless it is located in an on-campus structure listed on the National Register of Historic Places located within a designated National Historic Landmark District or such private club type is located upon the premises of a National Collegiate Athletic Association, or its successor, approved Division I, II, or III sports stadium used for revenue generating sports by a college or university on its campus and no classes are held at the sports stadium or at a private college sports stadium.

And,

On page 34, subparagraph 3.4.7.c by striking out “2.22.5” and inserting in lieu thereof “2.25.5”.

And,

On page 37, subsection 3.4.12.e, line six, following the words “commissioner’s requirements” and the period, by inserting a new sentence to read as follows: “Furthermore, where a municipality has authorized sidewalk dining areas by ordinance, a qualified permit holder has obtained a sidewalk dining permit from the municipality and the Commissioner, and additionally the municipality has authorized by ordinance that a qualified permit holder in the PODA may provide for the lawful sale, service, and tendering of alcohol (such alcohol as authorized for sale by the licensee’s license) from an approved sidewalk dining area in approved PODA cups to patrons, and the qualified permit holder has added the sidewalk dining area or areas as a part of its WVABCA floorplan comprising its licensed premises, then such qualified permit holder may conduct such lawful sales, service, and tendering of alcohol (such alcohol as authorized for sale by the licensee’s license) from the sidewalk dining area or areas without the dining requirement for such to-go alcoholic beverage sales.”

And,

On page 39, paragraph 4.2.3, after the word “A” by inserting the word “valid”.

And,

On page 39, paragraph 4.2.3 by deleting the word “card”.

And,

On page 39, paragraph 4.2.4, after the word “A” by inserting the word “valid”.

And,

On page 39, paragraph 4.5.5 by striking out the word “The” and inserting in lieu thereof the words “In each public restroom the”.

And,

(a) On page 48, subparagraph 5.1.1.h by striking out the words “in a position where the primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating beer, wine, or alcoholic liquors to any person;” and inserting in lieu thereof the words “in any capacity that includes, even incidentally, the selling, furnishing, tendering, serving, or giving of nonintoxicating beer, wine, or alcoholic liquors to any person;

On page twenty-seven, subsection 3.4.12.e, line six, following the words “commissioner’s requirements” and the period, by inserting a new sentence to read as follows: “Furthermore, where a municipality has authorized sidewalk dining areas by ordinance, a qualified permit holder has obtained a sidewalk dining permit from the municipality and the Commissioner, and additionally the municipality has authorized by ordinance that a qualified permit holder in the PODA may provide for the lawful sale, service, and tendering of alcohol (such alcohol as authorized for sale by the licensee’s license) from an approved sidewalk dining area in approved PODA cups to patrons, and the qualified permit holder has added the sidewalk dining area or areas as a part of its WVABCA floorplan comprising its licensed premises, then such qualified permit holder may conduct such lawful sales, service, and tendering of alcohol (such alcohol as authorized for sale by the licensee’s license) from the sidewalk dining area or areas without the dining requirement for such to-go alcoholic beverage sales.”

(b) The legislative rule filed in the State Register on August 20, 2024, authorized under the authority of §60-8-23 of this code, modified by the Alcohol Beverage Control Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 14, 2024, relating to the Alcohol Beverage Control Administration (sale of wine and hard cider, 175 CSR 04), is authorized.

(c) The legislative rule filed in the State Register on August 20, 2024, authorized under the authority of §16-9A-8 of this code, relating to the Alcohol Beverage Control Administration (tobacco products in vending machines, 175 CSR 09), is authorized.

(d) The legislative rule filed in the State Register on August 20, 2024, authorized under the authority of §60-2-11 of this code, modified by the Alcohol Beverage Control Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 14, 2024, relating to the Alcohol Beverage Control Administration (distilleries, mini-distilleries, and micro-distilleries, 175 CSR 10), is authorized with the following amendment:

On page five, subsection 3.3.2., line fourteen, following the words “\$.80 per case bailment fee” and the period, by striking out the remainder of subsection 3.3.2 and inserting the following: “In the interest of promoting tourism and for the pricing requirements set forth in the code, a distillery, mini-distillery, or micro-distillery conducting off-premises sales from its licensed premises must charge the additional 27% of the full 32% wholesale markup, plus bailment and delivery fees in calculating its wholesale cost prior to the applying the minimum retail markup to liquor purchased by patrons for off-premises personal consumption. The 27% of the 32% wholesale markup for off-premises sales at the distillery, mini-distillery, or micro-distillery’s licensed premises may be retained by the licensed distillery, mini-distillery, or micro-distillery from such sales. In the interest of promoting tourism, a distillery, mini-distillery, or micro-distillery is only required to remit to the WVABCA the 5% wholesale markup fee and \$.80 per case bailment fee for the number of bottles or cases of bottles sold from their licensed premises to the public for off-premises consumption. Such remittances for the first of the month through the 15th of the month shall occur on the 16th day of the month and from the 16th day of the month to the end of the month shall occur on the 1st day of the next month.”

(e) The legislative rule filed in the State Register on August 20, 2024, authorized under the authority of §19-12F-5 of this code, relating to the Alcohol Beverage Control Administration (retail enforcement of select plant-based derivatives and derivative products, including hemp and kratom, 175 CSR 11), is authorized.

(f) The legislative rule filed in the State Register on August 20, 2024, authorized under the authority of §11-16-22 of this code, modified by the Alcohol Beverage Control Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 3, 2024, relating to the Alcohol Beverage Control Administration (nonintoxicating beer licensing and operations procedures, 176 CSR 01), is authorized.

§64-7-2. Insurance Commissioner.

The legislative rule filed in the State Register on March 13, 2024, authorized under the authority of §33-28-5b of this code, relating to the Insurance Commissioner (Medicare Supplement Insurance, 114 CSR 24), is authorized.

§64-7-3. Lottery Commission.

The legislative rule filed in the State Register on August 2, 2024, authorized under the authority of §29-22D-4 of this code, modified by the Lottery Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 14, 2024, relating to the Lottery Commission (West Virginia Lottery Sports Wagering Rule, 179 CSR 09), is authorized.

§64-7-4. Tax Division.

(a) The legislative rule filed in the State Register on March 11, 2024, authorized under the authority of §11-10-5t of this code, modified by the State Tax Division to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 3, 2024, relating to the State Tax Division (payment of taxes by electronic funds transfer, 110 CSR 10F), is authorized.

(b) The legislative rule filed in the State Register on August 30, 2024, authorized under the authority of §11-10-23 of this code, modified by the State Tax Division to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 9, 2024, relating to the State Tax Division (alternative resolution of tax disputes, 110 CSR 10G), is authorized with the following amendment:

On page one, subsection 2.1, beginning on line twenty-one, following the words “Tax Division”, by striking out the words “and hearings before the Office of Tax Appeals”;

On page two, subsection 2.7, line one, preceding the words, “Revenue for”, by striking out the words “Tax and”;

And,

On page two, subsection 3.5, beginning on line thirty-seven, striking out the following:

“A taxpayer must file the request for the alternative dispute resolution prior to issuance of a finalized notice of proposed assessment. If the request is not timely received, the Division shall send the taxpayer a statement of account, and a notice of assessment and the time limitations set forth in the Code for filing a petition for hearing in the Office of Tax Appeals shall commence to run.”, and inserting in lieu thereof the following:

“A taxpayer shall file the request for the alternative dispute resolution prior to issuance of a finalized notice of assessment. If the request is not timely received, the Division shall send the taxpayer a finalized notice of assessment and the time limitations set forth in the Code for filing a petition for hearing in the Office of Tax Appeals shall commence to run.”

(c) The legislative rule filed in the State Register on March 11, 2024, authorized under the authority of §11-10-5 of this code, relating to the State Tax Division (consumers sales and service tax and use tax - drugs, durable medical goods, mobility enhancing equipment and prosthetic devices per se exemption; motor vehicles per se exemption, 110 CSR 15C), is authorized.

(d) The legislative rule filed in the State Register on March 11, 2024, authorized under the authority of §11-10-5 of this code, relating to the State Tax Division (exchange of information pursuant to written agreement, 110 CSR 50C), is authorized.

CHAPTER 170

(Com. Sub. for H. B. 2331 - By Delegate D. Smith)

[Passed April 7, 2025; in effect from passage]

[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §64-10-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating to authorizing certain agencies of the Department of Commerce to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to the certification, recertification and training of EMT miners and the certification of EMT-M instructors; authorizing the Division of Natural Resources to promulgate a legislative rule relating to transporting and selling wildlife parts and pelts; authorizing the Division of Natural Resources to promulgate a legislative rule relating to boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to public use of campgrounds in West Virginia State Parks and State Forests and Campsites in State Rail Trails under the Division of Natural Resources; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special projects and grants for West Virginia State Parks, State Forests, and State Rail Trails under the Division of Natural Resources; authorizing the Division of Natural Resources to promulgate a legislative rule relating to prohibitions when hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to general hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special

waterfowl hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special fishing; authorizing the Division of Natural Resources to promulgate a legislative rule relating to catching and selling bait fish; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to falconry.

Be it enacted by the Legislature of West Virginia:

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

§64-10-1. Office of Miners' Health, Safety, and Training.

The legislative rule filed in the State Register on November 7, 2024, authorized under the authority of §22A-10-3 of this code, relating to the Office of Miners' Health, Safety, and Training (certification, recertification, and training of EMT-Miners and the certification of EMT-M instructors, 56 CSR 22), is authorized.

§64-10-2. Division of Natural Resources.

(a) The legislative rule filed in the State Register on September 3, 2024, authorized under the authority of §20-2-11 of this code, relating to the Division of Natural Resources (transporting and selling wildlife parts and pelts, 58 CSR 16), is authorized.

(b) The legislative rule filed in the State Register on August 14, 2024, authorized under the authority of §20-7-13 of this code, relating to the Division of Natural Resources (boating, 58 CSR 25), is authorized.

(c) The legislative rule filed in the State Register on August 14, 2024, authorized under the authority of §20-7-13 of this code, relating to the Division of Natural Resources (special boating, 58 CSR 26), is authorized.

(d) The legislative rule filed in the State Register on August 14, 2024, authorized under the authority of §20-5-2 of this code, modified by the Division of Natural Resources to meet the

objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 3, 2024, relating to the Division of Natural Resources (public use of campgrounds in West Virginia State Parks and State Forests and Campsites in State Rail Trails under the Division of Natural Resources, 58 CSR 32), is authorized with the following amendment:

On page 1, by striking out all of subsection 2.2. and inserting in lieu thereof a new subsection 2.2. to read as follows:

2.2. A person who is 18 years of age or older must be at each rented campsite and is responsible for the actions and safety of all campsite occupants and shall be held liable for any damages caused by campsite occupants. Except that, at the discretion of the area superintendent, adjacent campsites occupied by youth organization groups may be considered supervised by a single person who is 18 years of age or older;

And,

On page 2, by striking out all of subsection 2.5. and inserting in lieu thereof a new subsection 2.5. to read as follows:

2.5. No more than two motor vehicles are permitted on a campsite at any time. No more than one camping unit (tent, trailer, motor home, camper van, etc.) is permitted on a campsite; *Provided*, That a family camping group or youth organization group, at the discretion of the area superintendent, may be permitted to have one or two small tents on its campsite in addition to the main camping unit: *Provided, however*, That the additional units may not be ecologically detrimental to the campsite. For purposes of this section, a family camping group is defined as a parent or guardian and his or her dependent children or other minor children accompanying the adult.

(d) The legislative rule filed in the State Register on August 14, 2024, authorized under the authority of §20-5-2 of this code, relating to the Division of Natural Resources (special projects and grants for West Virginia State Parks, State Forests, and State Rail Trails under the Division of Natural Resources, 58 CSR 34), is authorized.

(e) The legislative rule filed in the State Register on September 3, 2024, authorized under the authority of §20-1-7 of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 3, 2024, relating to the Division of Natural Resources (prohibitions when hunting and trapping, 58 CSR 47), is authorized with the following amendments:

On page 2, by striking out all of subsection 3.9.;

And,

By renumbering the remaining subsections.

(f) The legislative rule filed in the State Register on September 3, 2024, authorized under the authority of §20-1-7 of this code, relating to the Division of Natural Resources (general hunting, 58 CSR 49), is authorized.

(g) The legislative rule filed in the State Register on September 3, 2024, authorized under the authority of §20-1-7 of this code, relating to the Division of Natural Resources (special waterfowl hunting, 58 CSR 58), is authorized.

(h) The legislative rule filed in the State Register on August 14, 2024, authorized under the authority of §20-1-7 of this code, relating to the Division of Natural Resources (special fishing, 58 CSR 61), is authorized.

(i) The legislative rule filed in the State Register on August 14, 2024, authorized under the authority of §20-1-7 of this code, relating to the Division of Natural Resources (catching and selling baitfish, 58 CSR 62), is authorized.

(j) The legislative rule filed in the State Register on September 3, 2024, authorized under the authority of §20-1-7 of this code, relating to the Division of Natural Resources (falconry, 58 CSR 65), is authorized.

CHAPTER 171

(Com. Sub. for H. B. 2755 - By Delegates Hornby, Ellington, Holstein, Akers, Maynor, Willis, Kyle, Riley, Street, Chiarelli, and Phillips)

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]
[Approved by the Governor on April 30, 2025.]

AN ACT to amend and reenact §29A-3B-8, §29A-3B-9, §29A-3B-10, and §29A-3B-11 Code of West Virginia, 1931, as amended, relating to requiring the State Board of Education to submit newly promulgated rules to the Legislature through the Legislative Oversight Commission on Education Accountability; allowing the Legislature to approve, amend, or reject, in whole or in part, these rules in a manner prescribed by general law and pursuant to this article; adjusting the time frames for the State Board of Education to submit emergency rules to the Legislative Oversight Commission on Education Accountability; and providing for the expiration of those emergency rules if notice is not timely filed with the committee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3B. STATE BOARD OF EDUCATION RULEMAKING.

§29A-3B-1. Findings; definitions.

(a) The Legislature finds:

(1) That section one, article twelve of the West Virginia Constitution, titled “Education”, states in relevant part “The Legislature shall provide”, which language gives the Legislature primacy of authority over education in the State;

(2) That section one, article twelve of the West Virginia Constitution remains identical today as it was when the constitution was adopted in 1872, where the Legislature exercising its authority under section one, article twelve of “Education”, created the four-member West Virginia Board of Examiners in 1905. This was followed by the West Virginia Board of Education in 1908, and then the Legislature abolished that board and created a new State Board of Education in 1919;

(3) That the constitutional amendment of 1958 transferred the already established authority from the elected state superintendent to the West Virginia Board of Education with the same responsibilities for “general supervision” of free schools, and “performing such duties as may be prescribed by law”. The amendment kept the same authoritative language of responsibilities as had previously existed for the elected state superintendent under section two, article twelve of the West Virginia Constitution, without adding additional authoritative responsibility in the amendment;

(4) That section one, article twelve of the West Virginia Constitution does not entail the exclusive delegation of rule-making functions to the Legislature, but it does establish the Legislature as the ultimate authority to approve, amend, or reject rules promulgated by the West Virginia Board of Education under section two, article twelve of the West Virginia Constitution;

(5) That pursuant to section one, article five of the West Virginia Constitution, there are only three branches of government; and

(6) That the Legislature exercises authority over the West Virginia Board of Education pursuant to §18-2-5 of this code.

(b) As used in this article, "board" means the West Virginia Board of Education.

§29A-3B-8. Adoption of rules.

A rule shall be considered by the board for adoption not later than six months after the close of public comment and a notice of

withdrawal or adoption shall be filed in the State Register within that period. Failure to file such notice shall constitute withdrawal and the Secretary of State shall note such failure in the State Register immediately upon the expiration of the six-month period.

A rule may be amended by the board prior to final adoption without further hearing or public comment. No such amendment may change the main purpose of the rule. If the fiscal implications have changed since the rule was proposed, a new fiscal note shall be attached to the notice of filing. Upon adoption of the rule (including any such amendment), the board shall file the text of the adopted rule with its notice of adoption in the State Register.

§29A-3B-9. State Board of Education to promulgate rules; submission of legislative rules to the Legislative Oversight Commission on Education Accountability; submission of legislative rules, findings, and recommendations to the Legislature.

(a) Under its supervisory duties, the West Virginia Board of Education may promulgate rules or policies, and any new rule so promulgated shall be submitted to the Legislature for its review and approval, amendment, or rejection, in whole or in part, in the manner prescribed by general law, and pursuant to this section.

(b) If, within 15 months, the Legislature does not review and approve, or reject, in whole or in part, the rule as promulgated or amended in the manner prescribed by general law, and pursuant to this section, the rule shall become effective as initially promulgated by the West Virginia Board of Education.

(c) When the board proposes a legislative rule it has adopted, the board shall submit the following to the Legislative Oversight Commission on Education Accountability: (1) The full text of the legislative rule as proposed by the board and filed with the office of the Secretary of State, with new language underlined and with language to be deleted from any existing rule stricken through but clearly legible; (2) a brief summary of the content of the legislative rule and a description and a copy of any existing rule which the agency proposes to amend or repeal; (3) a statement of the

circumstances which require the rule; (4) a fiscal note containing all information included in a fiscal note for either chamber of the Legislature and a statement of the economic impact of the rule on the state or its residents; and (5) any other information which the commission may request or which may be required by law.

(d) At its discretion, the board may meet the filing requirement of subsection (c) of this section using either of the following methods:

(1) By submitting 20 copies of the proposed rule to the Legislative Oversight Commission on Education Accountability at its offices or at a regular meeting of the commission; or

(2) By submitting the proposed rule electronically to Legislative Oversight Commission on Education Accountability. Proposed rules submitted electronically shall be transmitted in a timely manner, shall contain all required information, and shall be compatible with computer applications in use by the Legislative Oversight Commission on Education Accountability.

(e) The Legislative Oversight Commission on Education Accountability shall review each proposed legislative rule and, in its discretion, may hold public hearings thereon. Such review shall include, but not be limited to, a determination of:

(1) Whether the board has exceeded the scope of its statutory authority in approving the proposed legislative rule;

(2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret, or make specific;

(3) Whether the proposed legislative rule conflicts with any other provision of this code or with any other rule adopted by the same or a different agency;

(4) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated;

(5) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

(6) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public; and

(7) Whether the proposed legislative rule was promulgated in compliance with the requirements of this article and with any requirements imposed by any other provision of this code.

(f) After reviewing the legislative rule, the Legislative Oversight Commission on Education Accountability shall recommend that the Legislature:

(1) Authorize the promulgation of the legislative rule;

(2) Authorize the promulgation of part of the legislative rule;

(3) Authorize the promulgation of the legislative rule with certain amendments;

(4) Recommend that the proposed rule be withdrawn; or

(5) Reject the proposed rule.

(g) The Legislative Oversight Commission on Education Accountability's submission of legislative rules submitted to them by the West Virginia Board of Education, alongside their findings and recommendations, shall be done in accordance with the procedures, but not the underlying delegating authority of §29A-3-1 *et seq.* of this code.

§29A-3B-10. Emergency legislative rules; procedure for promulgation; definition.

(a) The West Virginia Board of Education may, without hearing, find that an emergency exists requiring that emergency rules be promulgated and promulgate the same in accordance with this section. Such emergency rules, together with a statement of the facts and circumstances constituting the emergency, shall be filed in the State Register and shall become effective immediately upon

such filing. Such emergency rules may adopt, amend, or repeal any legislative rule, but the circumstances constituting the emergency requiring such adoption, amendment, or repeal shall be stated with particularity and be subject to de novo review by any court having original jurisdiction of an action challenging their validity.

(b) The board shall file ten copies of the rules and of the required statement with the Legislative Oversight Commission on Education Accountability. At its discretion, the board may meet the filing requirement contained in this subsection by submitting the emergency rule electronically to the Legislative Oversight Commission on Education Accountability. Proposed rules submitted electronically shall be transmitted in a timely manner, shall contain all required information and shall be compatible with computer applications in use by the Legislative Oversight Commission on Education Accountability.

(c) An emergency rule shall be effective for not more than 15 months and shall expire earlier if any of the following occurs:

(1) The board has not previously filed and fails to file a notice of public hearing on the proposed rule within 60 days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the sixty-first day.

(2) The board has not previously filed and fails to file the proposed rule with the Legislative Oversight Commission on Education Accountability within 30 days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the thirty-first day.

(3) The board adopts a legislative rule dealing with substantially the same subject matter since such emergency rule was first promulgated and in which case the emergency rule expires on the date the authorized rule is made effective.

(d) Any amendment to an emergency rule made by the board shall be filed in the State Register and does not constitute a new emergency rule for the purpose of acquiring additional time or

avoiding the expiration dates in subdivision (1), (2), or (3), subsection (c) of this section.

(e) Once an emergency rule expires due to the conclusion of 15 months or due to the effect of subdivision (1), (2), or (3), subsection (c) of this section, the board may not refile the same or similar rule as an emergency rule.

(f) Emergency legislative rules currently in effect under the prior provisions of this section may be refiled under the provisions of this section.

(g) The provision of this section shall not be used to avoid or evade any provision of this article or any other provisions of this code, including any provisions for legislative review of proposed rules. Any emergency rule promulgated for any such purpose may be contested in a judicial proceeding before a court of competent jurisdiction.

(h) Within 15 months, the Legislative Oversight Commission on Education Accountability shall review any emergency rule to determine: (1) Whether the board has exceeded the scope of its statutory authority in promulgating the emergency rule; (2) whether there exists an emergency justifying the promulgation of such rule; and (3) whether the rule was promulgated in compliance with the requirements and prohibitions contained in this section. The commission may recommend to the board, the Legislature, or the Secretary of State such action as it may deem proper.

§29A-3B-11. Legislative review of procedural rules, interpretive rules, and existing legislative rules.

The Legislative Oversight Commission on Education Accountability may review any procedural rules, interpretive rules, or existing legislative rules and may make recommendations concerning such rules to the Legislature, or to the board, or to both the Legislature and the board

CHAPTER 172

(H. B. 3156 - By Delegate Hanshaw (Mr. Speaker))

[Passed April 10, 2025; in effect 90 days from passage (July 9, 2025)]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §5A-2B-2 of the Code of West Virginia, 1931, as amended, relating to clarifying that the Legislature is not subject to the cost assessment, accounting, and reporting services of the Department of Administration Shared Services Section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2B. SHARED SERVICES.

§5A-2B-2. Cost analysis and reporting.

(a) The Department of Administration shall maintain a cost-performance assessment for use by each state spending unit to measure costs of that spending unit providing its own accounting and financial reporting services.

(b) Annually, on or before April 1, all state spending units shall report to the Shared Services Section information related to costs of providing accounting and financial reporting services based upon the metrics identified by the Shared Services Section in the cost-performance assessment. The deputy director shall evaluate the cost information provided by spending units to determine if the same services could be provided by the Shared Services Section at a lower cost and in a more efficient manner.

(c) Annually, on or before December 31, the deputy director shall report to the Governor and the Joint Committee on Government and Finance the cost savings and efficiencies resulting

from providing accounting and financial reporting services by the Shared Services Section.

(d) The Department of Administration may promulgate legislative rules, including emergency rules, to develop the assessment, any forms necessary for reporting costs, and any other information necessary pursuant to §29A-3-1 *et seq.* of this code.

(e) This section does not apply to the Legislature.

CHAPTER 173

**(Com. Sub. for Com. Sub. for H. B. 3089 - By Delegates
Rohrbach and Funkhouser)**

[Passed April 7, 2025; in effect July 1, 2025]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §17A-4-10, §17A-4A-2, and §17A-4A-2a of the Code of West Virginia, 1931, as amended, relating to vehicle titles; mandating all financial institutions recording five or more liens in a calendar year use the Division of Motor Vehicle's electronic lien and title system for all motor vehicle lien actions; specifying new and striking old effective date; shortening time an insurance company or insurer has to wait after the payment of a total loss claim prior to applying to the Division of Motor Vehicles for a title certificate to a vehicle that the owner has not chosen to retain; correcting agency designations; specifying format of issuance of certificates of title; and allowing electronic record of the certificate of title and lien be used as evidence.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

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

(a) In the event a motor vehicle is determined to be a total loss or otherwise designated as totaled by an insurance company or insurer, and upon payment of a total loss claim to an insured or claimant owner for the purchase of the vehicle, the insurance company or the insurer, as a condition of the payment, shall require the owner to surrender the certificate of title: *Provided*, That an insured or claimant owner may choose to retain physical

possession and ownership of a total loss vehicle. If the vehicle owner chooses to retain the vehicle and the vehicle has not been determined to be a cosmetic total loss in accordance with subsection (d) of this section, the insurance company or insurer shall also require the owner to surrender the vehicle registration certificate. The term “total loss” means a motor vehicle which has sustained damages equivalent to seventy-five percent or more of the market value as determined by a nationally accepted used car value guide or meets the definition of a flood-damaged vehicle as defined in this section.

(b) The insurance company or insurer shall, prior to the payment of the total loss claim, determine if the vehicle is repairable, cosmetically damaged, or nonrepairable. Except as provided in subsection (p) of this section, within 10 days of payment of the total loss claim, the insurance company or insurer shall surrender the certificate of title, a copy of the claim settlement, a completed application on a form prescribed by the commissioner, and the registration certificate if the owner has chosen to keep the vehicle to the Division of Motor Vehicles.

(c) If the insurance company or insurer determines that the vehicle is repairable, the division shall issue a salvage certificate, on a form prescribed by the commissioner, in the name of the insurance company, the insurer, or the vehicle owner if the owner has chosen to retain the vehicle. The certificate shall contain, on the reverse, spaces for one successive assignment before a new certificate at an additional fee is required. Upon the sale of the vehicle, the insurance company, insurer, or vehicle owner if the owner has chosen to retain the vehicle, shall complete the assignment of ownership on the salvage certificate and deliver it to the purchaser. The vehicle may not be titled or registered for operation on the streets or highways of this state unless there is compliance with subsection (h) of this section. The division shall charge a fee of \$22.50 for each salvage title issued. The Division of Motor Vehicles may adjust the fee for each salvage title every five years on September 1, based on the U.S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index:

Provided, That an increase in such fee may not exceed 10 percent of the total fee amount in a single year.

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

(1) The division shall, without further inspection, issue a title branded “cosmetic total loss” to the insured or claimant owner if the insured or claimant owner wishes to retain possession of the vehicle, in lieu of a salvage certificate. The division shall charge a fee of \$22.50 for each cosmetic total loss title issued. The terms “cosmetically damaged” and “cosmetic total loss” do not include any vehicle which has been damaged by flood or fire. The designation “cosmetic total loss” on a title may not be removed. The Division of Motor Vehicles may adjust the fee for each cosmetic total loss title every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in such fee may not exceed ten percent of the total fee amount in a single year.

(2) If the insured or claimant owner elects not to take possession of the vehicle and the insurance company or insurer retains possession, the division shall issue a cosmetic total loss salvage certificate to the insurance company or insurer. The division shall charge a fee of \$22.50 for each cosmetic total loss salvage certificate issued. The Division of Motor Vehicles may adjust the fee for each cosmetic total loss salvage certificate every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in such fee may not exceed ten percent of the total fee amount in a single year. The division shall, upon surrender of the cosmetic total loss salvage certificate issued under the provisions of this paragraph and payment of the five percent

motor vehicle sales tax on the fair market value of the vehicle as determined by the commissioner, issue a title branded “cosmetic total loss” without further inspection.

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

(f) Any owner who scraps, compresses, dismantles, or destroys a vehicle without further transfer or sale for which a certificate of title, nonrepairable motor vehicle certificate, or salvage certificate has been issued shall, within 45 days, surrender the certificate of title, nonrepairable motor vehicle certificate, or salvage certificate to the division for cancellation.

(g) Any person who purchases or acquires a vehicle as salvage or scrap, to be dismantled, compressed, or destroyed, shall, within 45 days, surrender to the division the certificate of title, nonrepairable motor vehicle certificate, salvage certificate, or a statement of cancellation signed by the seller, on a form prescribed by the commissioner. Subsequent purchasers of salvage or scrap are not required to comply with the notification requirement.

(h) If the motor vehicle is a “reconstructed vehicle” as defined in this section or §17A-1-1 of this code, it may not be titled or registered for operation until it has been inspected by an official state inspection station and by the Division of Motor Vehicles. Following an approved inspection, an application for a new certificate of title may be submitted to the division. The applicant is required to retain all receipts for component parts, equipment, and materials used in the reconstruction. The salvage certificate shall also be surrendered to the division before a certificate of title may be issued with the appropriate brand.

(i) The owner or title holder of a motor vehicle titled in this state which has previously been branded in this state or another state as salvage, reconstructed, cosmetic total loss, cosmetic total loss salvage, flood, fire, an equivalent term under another state's laws, or a term consistent with the intent of the National Motor Vehicle Title Information System established pursuant to 49 U. S. C. § 30502 shall, upon becoming aware of the brand, apply for and receive a title from the Division of Motor Vehicles on which the brand "reconstructed", "salvage", "cosmetic total loss", "cosmetic total loss salvage", "flood", "fire", or other brand is shown. The division shall charge a fee of \$10 for each title so issued. The Division of Motor Vehicles may adjust the fee for each reconstructed, salvage, cosmetic total loss, cosmetic total loss salvage, flood, fire, or other brand title issued every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in such fee may not exceed 10 percent of the total fee amount in a single year.

(j) If application is made for title to a motor vehicle, the title to which has previously been branded reconstructed, salvage, cosmetic total loss, cosmetic total loss salvage, flood, fire, or other brand by the Division of Motor Vehicles under this section and said application is accompanied by a title from another state which does not carry the brand, the division shall, before issuing the title, affix the brand "reconstructed", "cosmetic total loss", "cosmetic total loss salvage", "flood", "fire", or other brand to the title. The motor vehicle sales tax paid on a motor vehicle titled as reconstructed, cosmetic total loss, flood, fire, or other brand under the provisions of this section shall be based on 50 percent of the fair market value of the vehicle as determined by a nationally accepted used car value guide to be used by the commissioner.

(k) The division shall charge a fee of \$22.50 for the issuance of each salvage certificate or cosmetic total loss salvage certificate but shall not require the payment of the five percent motor vehicle sales tax. The Division of Motor Vehicles may adjust the fee for each salvage certificate or cosmetic total loss salvage certificate every five years on September 1, based on the U. S. Department of Labor,

Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in such fee may not exceed ten percent of the total fee amount in a single year. However, upon application for a certificate of title for a reconstructed, cosmetic total loss, flood or fire damaged vehicle, or other brand, the division shall collect the five percent privilege tax on the fair market value of the vehicle as determined by the commissioner unless the applicant is otherwise exempt from the payment of such privilege tax. A wrecker/dismantler/rebuilder, licensed by the division, is exempt from the payment of the five percent privilege tax upon titling a reconstructed vehicle. The division shall collect a fee of \$35 per vehicle for inspections of reconstructed vehicles. These fees shall be deposited in a special fund created in the State Treasurer's office and may be expended by the division to carry out the provisions of this article: *Provided*, That on and after July 1, 2007, any balance in the special fund and all fees collected pursuant to this section shall be deposited in the State Road Fund. Licensed wreckers/dismantlers/rebuilders may charge a fee not to exceed \$25 for all vehicles owned by private rebuilders which are inspected at the place of business of a wrecker/dismantler/rebuilder.

(l) As used in this section:

(1) "Reconstructed vehicle" means the vehicle was totaled under the provisions of this section or by the provisions of another state or jurisdiction and has been rebuilt in accordance with the provisions of this section or in accordance with the provisions of another state or jurisdiction or meets the provisions of §17A-1-1(n) of this code.

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

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

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

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

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

(p) Notwithstanding any other provision of law and with respect to a vehicle which the vehicle owner has not chosen to retain, if an insurance company or insurer is unable to obtain the properly endorsed certificate of title for a motor vehicle within 15 days of the payment of a total loss claim, the insurance company or insurer, at any time thereafter, may apply to the Division of Motor Vehicles for a salvage certificate, a cosmetic total loss salvage certificate, or a nonrepairable motor vehicle certificate, as applicable. The application shall be accompanied by evidence that the insurance company or insurer has paid a total loss claim on the vehicle, a copy of a written request for the certificate of title sent to the vehicle owner and any known lienholder by the insurance company or insurer or a designee of the insurance company or insurer, proof that the request was sent by certified mail, return receipt requested, to the last known address of the vehicle owner and any known lienholder, service to be complete upon the mailing thereof, and the required fee, if applicable. Upon receipt of a properly completed application, the division shall issue a salvage certificate, a cosmetic total loss salvage certificate or a nonrepairable motor vehicle certificate, as applicable, in the name

of the insurance company or insurer. Such salvage certificate, cosmetic total loss salvage certificate, or nonrepairable motor vehicle certificate shall be issued free and clear of all liens and claims of ownership.

(q) If an insurance company or insurer requests that an automobile auction take possession of a motor vehicle that is the subject of an insurance claim, and subsequently the insurance company denies coverage with respect to the motor vehicle or otherwise does not take ownership of the motor vehicle, the automobile auction may proceed as follows. At any time after the automobile auction has had possession of the motor vehicle for 45 days, it may apply to the division for a salvage certificate or a nonrepairable motor vehicle certificate without surrendering the certificate of title for the motor vehicle. The application shall be accompanied by a copy of a written request, on the automobile auction's letterhead, requesting that, upon payment of applicable charges, the vehicle be removed from the automobile auction's facility, proof that the request was delivered by a nationally-recognized courier service or by certified mail to the vehicle owner and any known lienholder at least 15 days before the date of the application, and the required fee, if applicable. Upon receipt of a properly completed application, the division shall issue a salvage certificate or a nonrepairable motor vehicle certificate, as applicable, in the name of the automobile auction. Such salvage certificate or nonrepairable motor vehicle certificate shall be issued free and clear of all liens and claims of ownership.

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

ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.

§17A-4A-2. Liens and encumbrances subsequently created.

(a) Liens or encumbrances placed on vehicles by the voluntary act of the owner after the original issue of title to be properly recorded must be shown on the certificate of title. In such cases, the owner or lienholder shall file application with the division on a blank furnished for that purpose, setting forth the lien or liens and such information and evidence of the lien in connection therewith as the division may deem necessary. Such information shall include the name and address of the lienholder, the kind of and nature of the lien, the date thereof, and the amount thereby secured. However, only the name and address of the lienholder shall be endorsed on the title certificate with the endorsement of the fact of such lien as hereinafter provided. The division, if satisfied that it is proper that the same be recorded, and upon surrender of the certificate of title covering the vehicle, shall thereupon issue a new certificate of title, showing the liens or encumbrances in the order of their filing being according to the date, hour, and minute of receipt by the division of the application for the same. For the purpose of recording a subsequent lien on a certificate of title, the subsequent lienholder shall make a written request upon the lienholder in possession of the certificate of title, accompanied by proof of the existence of the subsequent lien, stating his or her need to have possession of the certificate of title for the purpose of having his or her lien recorded thereon by the division. Thereupon, the lienholder in possession of the certificate shall within a reasonable time, not to exceed 10 days from the receipt of said written request, deliver the certificate of title to the requesting subsequent lienholder.

Upon delivery of the certificate of title, the subsequent lienholder shall immediately forward it and the lienholder's own application to the division for the filing of the lien and for the recording of the same on the certificate of title. Upon issuing the new certificate, the division shall thereupon send or deliver it to the holder of the first lien.

(b) The provisions of subsection (a) of this section shall not apply to: (1) Vehicles held as inventory for sale by a registered dealer holding title by assignment entered upon a certificate of title; or (2) vehicles for which certificates of title have been issued and

are held as inventory for lease by a vehicle rental agency or similar person engaged solely in the business of leasing vehicles. Any lien or encumbrance placed on such vehicles by the voluntary act of the owner shall be created and perfected in accordance with the provisions of §46-9-1 *et seq.* of this code.

§17A-4A-2a. Electronic transfer of liens.

(a) Notwithstanding any requirement in this chapter that a lien on a motor vehicle shall be noted on the face of the certificate of title, if there are one or more liens or encumbrance on a vehicle, trailer, semitrailer, pole trailer, factory-built home, or recreational vehicle, the division may electronically transmit the lien to the first lienholder and notify the first lienholder of any additional liens. Subsequent lien satisfactions may be electronically transmitted to the division and shall include the name and address of the person satisfying the lien and any other information required by the division as a condition of participating in the electronic lien information exchange program.

(b) The division may enter into agreements with a service provider or providers to administer the electronic exchange of lien information between dealers, financial institutions, and the division. For the purposes of this section, the term financial institutions shall have the same meaning as defined in §17A-6-10b of this code.

(c) When electronic transmission of liens and lien satisfaction is used, a hard copy certificate of title need not be issued until the last lien is satisfied and a clear hard copy certificate of title is issued to the owner of the vehicle. When a vehicle is subject to an electronic lien, the certificate of title for the vehicle shall be considered to be physically held by the lienholder for the purpose of compliance with state and federal odometer disclosure requirements and for any other requirement of this code. A duly certified copy of the division's electronic record of the certificate of title and lien shall be admissible in any civil, criminal, or administrative proceeding in this state as evidence of the existence of the lien.

(d) For the purposes of this chapter, whenever reference is made by this code to the physical production of a certificate of title as a paper document, or reference to the completion of information related to recording a lien as a paper document, the reference shall be understood to also include the transmission and recordation of the information in an electronic format.

(e) Beginning July 1, 2025, all financial institutions recording five or more liens in a calendar year shall use the division's electronic lien and title system for all lien actions. The division is not required to issue certificates of title as a paper document to a lienholder after the division's electronic lien and title system is fully implemented: *Provided*, That nothing in this section invalidates, prohibits a person from requesting, or prevents the division from issuing a certificate of title as a paper document.

CHAPTER 174

(Com. Sub. for S. B. 736 - By Senator Rucker)

[Passed April 10, 2025; in effect 90 days from passage (July 9, 2025)]
[Approved by the Governor on April 24, 2025.]

AN ACT to amend and reenact §6B-3-3 of the Code of West Virginia, 1931, as amended, relating to the publication of registered lobbyist information.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. LOBBYISTS.

§6B-3-3. Photograph and information publication.

Each lobbyist shall, at the time he or she registers, submit to the commission a recent photograph of the lobbyist of a size and format as determined by the commission, together with the name of the lobbyist's employer, a brief biographical description, and any other information the lobbyist may wish to submit, not to exceed 50 words in length. The photograph and information shall be made available to the public on the commission's website in a printable and electronically searchable format.

CHAPTER 175

**(Com. Sub. for H. B. 2695 - By Delegates Maynor, Roop,
Brooks, Toney, Willis, and Hornby)**

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]
[Approved by the Governor on April 28, 2025.]

AN ACT to amend and reenact §7-22-9 of the Code of West Virginia, 1931, as amended, relating to county economic opportunity development districts; authorizing Raleigh County to levy a special district excise tax for the benefit of the Raleigh County Economic Opportunity Development District; authorizing Mason County to levy a special district excise tax for the benefit of the Town of Henderson Economic Opportunity District; and requiring Mason County and Raleigh County to comply with requirements to hold a public hearing, submit a certain application, and receive approval as required by law; and requiring jurisdictions authorized to levy special excise tax to file a detailed annual report.”

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§7-22-9. Authorization to levy special district excise tax.

(a) General. — County commissions have no inherent authority to levy taxes and have only that authority expressly granted to them by the Legislature. The Legislature is specifically extended, and intends by this article, to exercise certain relevant powers expressed in section six-a, article X of the Constitution of this state as follows: (1) The Legislature may appropriate state funds for use in matching or maximizing grants-in-aid for public purposes from the United States or any department, bureau, commission or agency

thereof, or any other source, to any county, municipality or other political subdivision of the state, under such circumstances and subject to such terms, conditions and restrictions as the Legislature may prescribe by law; and (2) the Legislature may impose a state tax or taxes, or dedicate a state tax or taxes, or any portion thereof for the benefit of, and use by, counties, municipalities, or other political subdivisions of the state for public purposes, the proceeds of any such imposed or dedicated tax or taxes or portion thereof to be distributed to such counties, municipalities or other political subdivisions of the state under such circumstances and subject to such terms, conditions and restrictions as the Legislature may prescribe.

Because a special district excise tax would have the effect of diverting, for a specified period of years, tax dollars which to the extent, if any, are not essentially incremental to tax dollars currently paid into the General Revenue Fund of the state, the Legislature finds that in order to substantially ensure that such special district excise taxes will not adversely impact the current level of the General Revenue Fund of the state, it is necessary for the Legislature to separately consider and act upon each and every economic development district which is proposed, including the unique characteristics of location, current condition and activity of and within the area included in such proposed economic opportunity development district and that for such reasons a statute more general in ultimate application is not feasible for accomplishment of the intention and purpose of the Legislature in enacting this article. Therefore, no economic opportunity development district excise tax may be levied by a county commission until after the Legislature expressly authorizes the county commission to levy a special district excise tax on sales of tangible personal property and services made within district boundaries approved by the Legislature.

(b) Authorizations. — The Legislature authorizes the following county commissions to levy special district excise taxes on sales of tangible personal property and services made from business locations in the following economic opportunity development districts:

(1) The Ohio County Commission may levy a special district excise tax for the benefit of the Fort Henry Economic Opportunity Development District which comprises 500 contiguous acres of land. Notwithstanding the time limitations provisions of subdivision (2), subsection (a), section fifteen of this article, the Fort Henry Economic Opportunity Development District shall not be abolished under subdivision (2), subsection (a), section fifteen of this article until the year 2054, unless sooner abolished and terminated in accordance with the provisions of subdivision (1), subsection (a), section fifteen of this article or any other provision of this code, or sooner abolished for any other reason: *Provided*, That on December 31, 2054, the provisions of subdivision (2), subsection (a), section fifteen of this article shall apply to abolish the Fort Henry Economic Opportunity Development District, if the district has not been abolished prior to that date.

(2) The Harrison County Commission may levy a special district excise tax for the benefit of the Charles Pointe Economic Opportunity Development District which comprises 437 acres of land.

(3) The Monongalia County Commission may levy a special district excise tax for the benefit of the University Town Centre Economic Opportunity Development District which comprises approximately 1,450 contiguous acres of land. Notwithstanding the time limitations provisions of §7-22-15(a)(2) of this code, the University Town Centre Economic Opportunity Development District shall not be abolished pursuant to §7-22-15(a)(2) of this code until the year 2053, unless sooner abolished and terminated in accordance with the provisions of subdivision §7-22-15(a)(1) of this code or any other provision of this code, or sooner abolished for any other reason: *Provided*, That on December 31, 2053, the provisions of §7-22-15(a)(2) of this code shall apply to abolish the University Town Centre Economic Opportunity Development District, if the district has not been abolished prior to that date.

(4) The Jefferson County Commission may levy a special district excise tax for the benefit of the Hill Top House Hotel Economic Opportunity District which comprises approximately 11

contiguous acres of land: *Provided*, That notwithstanding any other provision of this article to the contrary:

(A) The Jefferson County Commission may create the district and levy the special district excise tax by order entered of record as provided in §7-22-10 of this code without the approval of the executive director of the development office; and

(B) The Jefferson County Commission may determine the base district tax, the base tax revenue amount, the gross annual district tax revenue amount, and the estimated net annual district tax revenue amount in lieu of that determination by the development office as provided in §7-22-7 of this code. For purposes of determining the base tax revenue amount, the Jefferson County Commission shall promptly request a certification from the Tax Commissioner of the base tax revenue amount and the Tax Commissioner shall provide the certification to the Jefferson County Commission within thirty days.

(5) The Mercer County Commission may levy a special district excise tax for the benefit of The Ridges Economic Opportunity Development District which comprises approximately 420 contiguous acres of land, subject to holding a public hearing as provided in §7-22-14(c) of this code, submitting the application required by §7-22-14(d) of this code, and obtaining the approval of the West Virginia Development Office as provided in §7-22-14(e) of this code.

(6) The Raleigh County Commission may levy a special district excise tax for the benefit of the Raleigh County Economic Opportunity Development District which comprises approximately 1,600 contiguous acres of land, subject to holding a public hearing as provided in §7-22-6 of this code, submitting the application required by §7-22-6 and §7-22-7 of this code, and obtaining the approval of the West Virginia Development Office as provided in §7-22-7 of this code.

(7) The Mason County Commission may levy a special district excise tax for the benefit of the Town of Henderson Economic Opportunity District which comprises approximately 150

contiguous acres of land, subject to holding a public hearing as provided in §7-22-6 of this code, submitting the application required by §7-22-6 and §7-22-7 of this code, and obtaining the approval of the West Virginia Development Office as provided in §7-22-7 of this code.

(c) *Annual Reports.* — Notwithstanding any other provision of this code to the contrary, any jurisdiction that imposes a special district excise tax shall compile and issue an annual report for each fiscal year of operation, such year beginning on July 1 and ending on June 30. The annual report shall be issued on or before the next succeeding December 31 after the close of each fiscal year.

(1) The annual report shall be filed with the Governor, the Secretary of Commerce, the Secretary of Revenue, and the Joint Committee on Government and Finance.

(2) The annual report shall set forth in detail the following information:

(A) The amount of special district excise tax collected during the fiscal year.

(B) The total assessed value of all property located in the district at the inception of the district;

(C) The total assessed value of all property for the most recent property tax year in the district;

(D) A list of all businesses operating in the special district during the report year;

(E) The amount of indebtedness attributed to the sales tax increment financing project;

(F) The date of maturity for debts and annual amortization payment schedules for debt financed with the sales tax increment financing project;

(G) The projected date for retirement of all debt financed with the sales tax increment financing project; and

(H) The projected date of dissolution of the special district.

CHAPTER 176

(Com. Sub. for Com. Sub. for S. B. 464 - By Senators Morris, Deeds, Fuller, Hamilton, Helton, Weld, Woelfel, Chapman, Willis, Jeffries, and Rose)

[Passed April 9, 2025; in effect 90 days from passage (July 8, 2025)]
[Approved by the Governor on April 24, 2025.]

AN ACT to amend and reenact §17A-3-14g of the Code of West Virginia, 1931, as amended, relating to the issuance of special plates to recipients of the Distinguished Medal of Valor or their surviving spouse; providing for plate design by Division of Motor Vehicles; specifying fees; exempting certain individuals from registration fees; and providing application and qualification requirements.

Be it enacted by the Legislature of West Virginia:

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

§17A-3-14g. Special registration plates for first responders.

(a) The division may issue special emergency or volunteer registration plates as follows:

(1) Any owner of a motor vehicle who is a resident of the state of West Virginia and who is a certified paramedic or emergency medical technician, member of a paid fire department, member of the State Fire Commission, the State Fire Marshal, State Fire Marshal assistant, State Fire Administrator, or voluntary rescue squad member may apply for a special license plate for any number of Class A vehicles titled in the name of the qualified applicant which bears the insignia of the profession, group, or commission.

Any insignia shall be designed by the commissioner. License plates issued pursuant to this subsection shall bear the requested insignia in addition to the registration number issued to the applicant pursuant to the provisions of this article.

(2) Each application submitted pursuant to this subsection shall be accompanied by an affidavit signed by the fire chief or department head of the applicant stating that the applicant is justified in having a registration with the requested insignia, proof of compliance with all laws of this state regarding registration and licensure of motor vehicles, and payment of all required fees.

(3) Each application submitted pursuant to this subsection shall be accompanied by payment of a special initial application fee of \$10, which is in addition to all other fees required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(b) The division may issue special certified firefighter registration plates as follows:

(1) Any owner of a motor vehicle who is a resident of the state of West Virginia and who is a certified firefighter may apply for a special license plate that bears the insignia of the profession for any number of Class A vehicles titled in the name of the qualified applicant. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subsection shall bear the requested insignia pursuant to the provisions of this article. Upon presentation of written evidence of certification as a certified firefighter, certified firefighters are eligible to purchase the special registration plate issued pursuant to this subsection.

(2) Each application submitted pursuant to this subsection shall be accompanied by an affidavit stating that the applicant is justified in having a registration with the requested insignia, proof of compliance with all laws of this state regarding registration and licensure of motor vehicles, and payment of all required fees. The firefighter certification department, section, or division of the West Virginia University fire service extension shall notify the commissioner in writing immediately when a firefighter loses his

or her certification. If a firefighter loses his or her certification, the commissioner may not issue him or her a license plate under this subsection.

(3) Each application submitted pursuant to this subsection shall be accompanied by payment of a special initial application fee of \$10, which is in addition to all other fees required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(c) The division may issue special volunteer firefighter registration plates as follows:

(1) Any owner of a motor vehicle who is a resident of West Virginia and who is a volunteer firefighter may apply for a special license plate for any Class A vehicle titled in the name of the qualified applicant which bears the insignia of the profession in white letters on a red background. The insignia shall be designed by the commissioner and shall contain a fireman's helmet insignia on the left side of the license plate.

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

(3) Each application submitted pursuant to this subsection shall be accompanied by payment of a special one-time initial application fee of \$10, which is in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(d) The division may issue special registration plates to applicants supporting law-enforcement officers, to retired members of the West Virginia State Police, and to survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency as follows:

(1) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner which recognizes, supports, and honors the men and women of law-enforcement and includes the words "Back the Blue". Upon appropriate application, the division shall issue to any member of a municipal police department, sheriff's department, the State Police, or the law-enforcement division of the Division of Natural Resources who has been wounded in the line of duty and awarded a Purple Heart in recognition thereof by the West Virginia Chiefs of Police Association, the West Virginia Sheriffs' Association, the West Virginia Troopers Association, or the Division of Natural Resources a special registration plate for one vehicle titled in the name of the qualified applicant with an insignia appropriately designed by the commissioner.

(2) For special registration plates supporting law-enforcement officers, the division shall charge a special initial application fee of \$10 in addition to all other fees required by this chapter. This special fee shall be collected by the division and deposited in the State Road Fund. An annual fee of \$15 shall be charged for each plate supporting law-enforcement officers in addition to all other fees required by this chapter.

(3) Registration plates issued pursuant to this subsection to survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency are exempt from the registration fees otherwise required by the provisions of this chapter. A surviving spouse may continue to use his or her deceased spouse's special registration plate until the surviving spouse dies, remarries, or does not renew the plate. Survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency may obtain a license plate as described in this subsection for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge for the second plate a one-time fee of \$10, to be deposited into the State Road Fund, which is in addition to all other fees required by this chapter.

(4) Upon appropriate application, the division may issue special registration plates designed by the commissioner for any

number of vehicles titled in the name of the qualified applicant who offers sufficient proof of being a retired member of the West Virginia State Police. The division shall charge a special initial application fee of \$10 in addition to all other fees required by this chapter. This special fee shall be collected by the division and deposited in the State Road Fund.

(e) The division may issue special plates with an insignia appropriately designed by the commissioner to recipients of the distinguished Medal of Valor awarded under §29-32-1 *et seq.* of this code to firefighters, law-enforcement officers, and emergency medical services personnel who distinguish themselves conspicuously by gallantry and intrepidity at the risk of their lives above and beyond the call of duty in the performance of their duties as follows:

(1) Any Medal of Valor recipient under §29-32-1 *et seq.* of this code or their surviving spouse may apply to receive the special registration plate issued pursuant to this subsection for any Class A vehicle titled in the name of the Medal of Valor recipient or their surviving spouse.

(2) The applicant shall present satisfactory proof as determined by the commissioner as evidence of qualification for any plate authorized in this subsection. A surviving spouse may continue to use the license plate of his or her deceased spouse that was issued pursuant to this subsection until the surviving spouse dies, remarries, or does not renew the license plate.

(3) A qualified applicant as provided in paragraph (1) of this subsection may apply for a second license plate as described in this subsection for use on a Class A vehicle titled in the name of the qualified applicant.

(4) Registration plates issued pursuant to this subsection to qualified applicants are exempt from the registration fees otherwise required by the provisions of this chapter. A qualified applicant may obtain a license plate as described in this subsection for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge for the second plate a one-time fee of \$10, to be deposited into the State Road Fund, which is in addition to all other fees required by this chapter.

CHAPTER 177

(Com. Sub. for H. B. 2053 - By Delegates D. Smith and Heckert)

[Passed March 13, 2025; in effect ninety days from passage (June 11, 2025)]

[Approved by the Governor on March 21, 2025.]

AN ACT to amend and reenact §5-10-15, §8-22A-2, §9A-3-1, §11-21-12, §15-2-28, §15-2A-2, §18-7A-17a, §18-10F-2, §30-29-6, §48-31-102, and §62-16-3 of the Code of West Virginia, 1931, as amended, relating to including the United States Space Force in the definitions of certain terms that individually reference the Armed Forces of the United States.

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.**

§5-10-15. Military service credit; qualified military service.

(a)(1) The Legislature recognizes the men and women of this state who have served in the armed forces of the United States during times of war, conflict and danger. It is the intent of this subsection to confer military service credit upon persons who are eligible at any time for public employees retirement benefits for any time served in active duty in the armed forces of the United States, regardless of whether the person was a public employee at the time of entering the military service.

(2) In addition to any benefit provided by federal law, any member of the retirement system who has previously served in or enters the active service of the armed forces of the United States, including active duty in the National Guard performed pursuant to Title 10 or Title 32 of the United States Code, shall receive credited service for the time spent in the armed forces of the United States, not to exceed five years, if the member:

(A) Has been honorably discharged from the armed forces; and

(B) Substantiates by appropriate documentation or evidence his or her active military service.

If a member of the retirement system enters the active service of the armed forces of the United States, the member's contributions to the retirement system are suspended during the period of the active service and until the member's return to the employ of a participating public employer, and any credit balance remaining in the member's deposit fund shall accumulate regular interest: *Provided*, That notwithstanding any provision in this article to the contrary, if an employee of a participating political subdivision serving on active duty in the military has accumulated credited service prior to the last entry into military service, in an amount that, added to the time in active military service while an employee equals nine or more years, and the member is unable to resume employment with a participating employer upon completion of duty due to death during or as a result of active service, all time spent in active military service, up to and including a total of five years, is considered to be credited service and death benefits are vested in the member: *Provided, however*, That the active service during the time the member is an employee must be as a result of an order or call to duty, and not as a result of volunteering for assignment or volunteering to extend the time in service beyond the time required by order or call.

(b) Subsection (a) of this section does not apply to any member who first becomes an employee of a participating public employer on or after July 1, 2015. This subsection does not apply to any member who first became an employee of a participating public employer before July 1, 2015.

(1) A member who first becomes an employee of a participating public employer on or after July 1, 2015, may purchase up to 60 months of military service credit for time served in active military duty prior to first becoming an employee of a participating public employer if all of the following conditions are met:

(A) The member has completed at least 12 consecutive months of contributory service upon first becoming an employee of a participating public employer;

(B) The active military duty occurs prior to the date on which the member first becomes an employee of a participating public employer; and

(C) The employee pays to the retirement system the actuarial reserve purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system: *Provided*, That any employee who ceases employment with a participating public employer before completing the required actuarial reserve purchase amount in full shall not be eligible to purchase the military service.

(2) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first becomes an employee of a participating public employer on or after July 1, 2015, but who does not remain employed and contributing to the retirement system for at least 12 consecutive months after his or her initial employment, shall be considered to have met the requirement of paragraph (A), subdivision (1) of this subsection the first time he or she becomes an employee of a participating public employer and completes at least 12 consecutive months of contributing service. Such a member shall be considered to have met the requirement of paragraph (C), subdivision (1) of this subsection if he or she pays to the retirement system the actuarial reserve purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the

member the first time he or she becomes an employee of a participating public employer and completes at least 12 consecutive months of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(3) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first becomes an employee of a participating public employer on or after July 1, 2015, as an elected official, shall be considered to have met the requirement of paragraph (A), subdivision (1) of this subsection after remaining employed for the first 12 consecutive months of his or her term and first becoming an employee, regardless of whether a salary is paid to the employee for each such month. An elected official who does not elect to begin participating in the retirement system upon first becoming an employee of a participating public employer as an elected official is not eligible to purchase military service credit pursuant to subdivision (1) of this subsection.

(4) A member who first becomes an employee of a participating public employer on or after July 1, 2015, may purchase military service credit for active military duty performed on or after the date he or she first becomes an employee of a participating public employer only if all of the following conditions are met: *Provided*, That the maximum military service credit such member may purchase shall take into account any military service credit purchased for active military duty pursuant to subdivision (1) of this subsection in addition to any military service credit purchased pursuant to this subdivision:

(A) The member was an employee of a participating public employer, terminated employment and experienced a break in contributing service in the retirement system of one or more months, performed active military service while not an employee of the participating public employer and not contributing to the retirement system, then again becomes an employee of a participating public employer and completes at least 12 consecutive months of contributory service;

(B) The member does not qualify for military service credit for such active military duty pursuant to subsection (d) of this section; and

(C) The member pays to the retirement system the actuarial reserve lump sum purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member after he or she again becomes an employee of a participating public employer immediately following the period of active military duty and break in service and completes at least 12 consecutive months of contributory service and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(5) Notwithstanding paragraph (A), subdivision (4) of this subsection, a member who otherwise meets the requirements of said paragraph, but who does not remain employed and contributing to the retirement system for at least 12 consecutive months when he or she first becomes an employee of a participating public employer after the period of active military duty and break in service, shall be considered to have met the requirement of paragraph (A), subdivision (4) of this subsection the first time he or she again becomes an employee of a participating public employer and completes at least 12 consecutive months of contributing service. Such a member shall be considered to have met the requirement of paragraph (C), subdivision (4) of this subsection if he or she pays to the retirement system the actuarial reserve lump sum purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member for the first time he or she again becomes an employee of a participating public employer and completes at least 12 consecutive months of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(6) Notwithstanding paragraph (A), subdivision (4) of this subsection, a member who becomes an employee of a participating public employer after such a period of active military duty and break in service as an elected official shall be considered to have

met the requirement of paragraph (A), subdivision (4) of this subsection after remaining employed for the first 12 consecutive months of his or her term after again becoming an employee, regardless of whether a salary is paid to the employee for each such month. Such an individual must elect to begin participating in the retirement system immediately upon again becoming an employee of a participating public employer after the period of active military duty and break in service.

(7) For purposes of this subsection, the following definitions apply:

(A) "Active military duty" means full-time active duty in the armed forces of the United States for a period of 30 or more consecutive calendar days. Active military duty does not include inactive duty of any kind.

(B) "Actuarial reserve purchase amount" means the purchase annuity rate multiplied by the purchase accrued benefit, calculated as of the calculation month, plus annual interest accruing at 7.5 percent from the calculation month through the purchase month, compounded monthly: *Provided*, That if the employee elects to pay the full purchase amount on an installment or partial payment basis, the actuarial reserve purchase amount will include the lump sum payment plus additional interest accruing at 7.5 percent until the purchase amount is paid in full.

(C) "Armed forces of the United States" means the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard, the reserve components thereof, and the National Guard of the United States or the National Guard of a state or territory when members of the same are on full-time active duty pursuant to Title 10 or Title 32 of the United States Code.

(D) "Calculation month" means the month immediately following the month in which the member completes the 12 consecutive months of contributory service with a participating public employer required by this subsection, as applicable.

(E) "Purchase accrued benefit" means two percent times the purchase military service times the purchase average monthly salary.

(F) "Purchase age" means the age of the employee in years and completed months as of the first day of the calculation month.

(G) "Purchase annuity rate" means the actuarial lump sum annuity factor calculated as of the calculation month based on the following actuarial assumptions: Interest rate of 7.5 percent; mortality of the 1971 group annuity mortality table, 50 percent blended male and female rates, applied on a unisex basis to all members; if purchase age is under age 62, a deferred annuity factor with payments commencing at age 62; and if purchase age is 62 or over, an immediate annuity factor with payments starting at the purchase age.

(H) "Purchase average monthly salary" means the average monthly salary of the member during the months two through 12 of the 12 consecutive month period required by this subsection of this section, as applicable.

(I) "Purchase military service" means the amount of military service being purchased by the employee in months up to the 60-month maximum, calculated in accordance with subdivision (9) of this subsection.

(J) "Purchase month" means the month in which the employee deposits the actuarial reserve lump sum purchase amount in full payment of the service credit being purchased or makes the final payment of the actuarial reserve purchase amount into the plan trust fund in full payment of the service credit being purchased.

(8) A member may purchase military service credit for a period of active military duty pursuant to this subsection only if the member received an honorable discharge for such period. Anything other than an honorable discharge, including, but not limited to, a general or under honorable conditions discharge, an entry-level separation discharge, an other than honorable conditions discharge

or a dishonorable discharge, shall disqualify the member from receiving military service credit for the period of service.

(9) To calculate the amount of military service credit a member may purchase, the board shall add the total number of days in each period of a member's active military duty eligible to be purchased, divide the total by 30, and round up or down to the nearest integer (fractions of 0.5 shall be rounded up), in order to yield the total number of months of military service credit a member may purchase, subject to the 60-month maximum. A member may purchase all or part of the maximum amount of military service credit he or she is eligible for in one-month increments.

(10) To receive credit, a member must submit a request to purchase military service credit to the board, on such form or in such other manner as shall be required by the board, within the 12 consecutive month period required by this subsection, as applicable. The board shall then calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the member within the 48-month period required by this subsection, as applicable. A member purchasing military service credit pursuant to this subsection must do so in a single, lump sum payment: *Provided*, That the board may accept partial, installment or other similar payments if the employee executes a contract with the board specifying the amount of military service to be purchased and the payments required: *Provided, however*, That any failure to pay the contract amount in accordance with this section shall be treated as an overpayment or excess contribution subject to §5-10-44 of this code and no military service shall be credited.

(11) The board shall require a member requesting military service credit to provide official documentation establishing that the requirements set forth in this subsection have been met.

(12) Military service credit purchased pursuant to this subsection may not be considered contributing service credit or contributory service for purposes of this article.

(13) If a member who has purchased military service credit pursuant to this subsection is eligible for and requests a withdrawal

of accumulated contributions pursuant to the provisions of this article, he or she shall also receive a refund of the actuarial reserve purchase amount he or she paid to the retirement system to purchase military service credit, together with regular interest on such amount.

(c) No period of military service may be used to obtain credit in more than one retirement system administered by the board and once used in any system, a period of military service may not be used again in any other system.

(d) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same may be amended from time to time. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code.

(e) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board has final power to determine the period. Notwithstanding the provisions of §5-10-3a of this code, the provisions of this section are not subject to liberal construction. The board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in §5-10D-1 of this code, may propose rules to administer this section for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

***§8-22A-2. Definitions.**

***Note:** This section was also amended by S. B. 712 (Chapter 199), which passed subsequent to this Act and S. B. 35 (Chapter 161), which passed subsequent to this Act.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member 2.75 percent per year of the member's final average salary for the first 20 years of credited service. Additionally, 2 percent per year for 21 through 25 years and 1.5 percent per year for each year over 25 years will be credited with a maximum benefit of 90 percent of a member's final average salary. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §8-22A-10 of this code.

(b) "Accumulated contributions" means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

(c) "Active military duty" means full-time duty in the active military service of the United States Army, Navy, Air Force, Coast Guard, Space Force, or Marine Corps. The term does not include regularly required training or other duty performed by a member of a reserve component or National Guard unless the member can substantiate that he or she was called into the full-time active military service of the United States and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) "Actuarial equivalent" means a benefit of equal value computed on the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined

without regard to any rules that limit the remuneration included in wages based on the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits, or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost-of-living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the month for which an annuity is payable after submission of a retirement application or the required beginning date, if earlier. For purposes of this subsection, if retirement income payments commence after the normal retirement age, "retirement" means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member's normal retirement age and after completing proper written application for retirement on an application supplied by the board.

(h) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

(i) "Board" means the Consolidated Public Retirement Board.

(j) "Covered employment" means either: (1) Employment as a full-time municipal police officer or firefighter and the active performance of the duties required of that employment; or (2) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by a municipal police officer or firefighter in a job or jobs in addition to his or her employment as a municipal police officer or firefighter in this plan where the secondary employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That the police officer or firefighter contributes to the fund created in this

article the amount specified as the member's contribution in §8-22A-8 of this code.

(k) "Credited service" means the sum of a member's years of service, active military duty, and disability service.

(l) "Dependent child" means either: (1) An unmarried person under age 18 who is: (A) A natural child of the member; (B) a legally adopted child of the member; (C) a child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or (D) a stepchild of the member residing in the member's household at the time of the member's death; or (2) Any unmarried child under age 23: (A) Who is enrolled as a full-time student in an accredited college or university; (B) who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and (C) whose relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of this subsection.

(m) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(n) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof, or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(o) "Effective date" means January 1, 2010.

(p) "Employer error" means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(q) "Final average salary" means the average of the highest annual compensation received for covered employment by the

member during any five consecutive plan years within the member's last 10 years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then "final average salary" means the average of the monthly compensation which the member was receiving in the plan year prior to the initial disability. "Final average salary" does not include any lump sum payment for unused, accrued leave of any kind or character.

(r) "Full-time employment" means permanent employment of an employee by a participating municipality in a position which normally requires 12 months per year service and requires at least 1,040 hours per year service in that position.

(s) "Fund" means the West Virginia Municipal Police Officers and Firefighters Retirement Fund created by this article.

(t) "Hour of service" means: (1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and (2) each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member may not be credited with any hours of service for any period of time he or she is receiving benefits under §8-22A-17 and §8-22A-18 of this code; and (3) each hour for which back pay is either awarded or agreed to be paid by the employing municipality, irrespective of mitigation of damages. The same hours of service may not be credited both under subdivision (1) or (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement

pertains, rather than the plan year in which the award, agreement or payment is made.

(u) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

(v) "Member" means, except as provided in §8-22A-32 and §8-22A-33 of this code, a person hired as a municipal police officer or municipal firefighter, as defined in this section, by a participating municipal employer on or after January 1, 2010. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(w) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

(x) "Municipality" has the meaning ascribed to it in this code.

(y) (1) "Municipal police officer" means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal policemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal policemen's pension and relief fund as provided in §8-22-16 of this code: *Provided*, That municipal police officer also means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid police department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(2) "Municipal firefighter" means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which has established and maintains a

municipal firemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal firemen's pension and relief fund as provided in §8-22-16 of this code: *Provided*, That municipal firefighter also means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid fire department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(z) "Municipal subdivision" means any separate corporation or instrumentality established by one or more municipalities, as permitted by law; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more municipalities.

(aa) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(bb) "Normal retirement age" means the first to occur of the following: (1) Attainment of age 50 years and the completion of 20 or more years of regular contributory service; (2) while still in covered employment, attainment of at least age 50 years and when the sum of current age plus regular contributory service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years and completion of 10 years of regular contributory service; or (4) attainment of age 62 years and completion of five or more years of regular contributory service.

(cc) "Plan" means the West Virginia Municipal Police Officers and Firefighters Retirement System established by this article.

(dd) "Plan year" means the 12-month period commencing on January 1 of any designated year and ending the following December 31.

(ee) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, firefighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(ff) "Regular contributory service" means a member's credited service excluding active military duty, disability service and accrued annual and sick leave service.

(gg) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(hh) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise separates from covered employment.

(ii) "Retirement income payments" means the monthly retirement income payments payable.

(jj) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(kk) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(ll) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subsection:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration; and (2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.

(mm) "Vested" means eligible for retirement income payments after completion of five or more years of regular contributory service.

(nn) "Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based on the hours of service performed as covered employment and credited to the member during the plan year based on the following schedule:

Hours of Service	Year of Service Credited
Less than 500	0
500 to 999	1/3
1,000 to 1,499	2/3
1,500 or more	1

During a member's first and last years of covered employment, the member shall be credited with one-twelfth of a year of service for each month during the plan year in which the member is

credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §8-22A-17 and §8-22A-18 of this code.

CHAPTER 9A. VETERANS' AFFAIRS.

ARTICLE 3. STATE CEMETERY FOR VETERANS.

§9A-3-1. Department empowered to establish and maintain cemetery.

The Department of Veterans' Assistance is hereby empowered to establish and maintain a state veterans' cemetery which shall be centrally located within the state and easily accessible. Interment in the state veterans' cemetery shall be available to all persons who are residents and citizens of the state and who have served in the Armed Forces of the United States, including the Army, Air Force, Navy, Marine Corps, Space Force, and Coast Guard, and who have a discharge other than dishonorable.

Further, the Department of Veterans' Assistance is hereby granted authority to acquire and transfer real property to the United States Department of Veterans Affairs contingent upon the utilization of such real property by that federal agency for the establishment of a new national cemetery or for the expansion of an existing national cemetery.

For the purposes set forth in this article the Department of Veterans' Assistance is hereby authorized to receive funds by gift, grant, appropriation or by any other means from any source available or to become available.

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

(a) General. — The West Virginia adjusted gross income of a resident individual means his or her federal adjusted gross income

as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income. — There shall be added to federal adjusted gross income, unless already included therein, the following items:

(1) Interest income on obligations of any state other than this state or of a political subdivision of any other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Any deduction allowed when determining federal adjusted gross income for federal income tax purposes for the taxable year that is not allowed as a deduction under this article for the taxable year;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;

(5) Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the federal taxable year;

(6) The amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes; and

(7) Amounts withdrawn from a medical savings account established by or for an individual under §33-15-20 or §33-16-15 of this code that are used for a purpose other than payment of medical expenses, as defined in those sections.

(c) Modifications reducing federal adjusted gross income. — There shall be subtracted from federal adjusted gross income to the extent included therein:

(1) Interest income on obligations of the United States and its possessions to the extent includable in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the State of West Virginia to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States or of the State of West Virginia, including federal interest or dividends paid to shareholders of a regulated investment company, under Section 852 of the Internal Revenue Code for taxable years ending after June 30, 1987;

(3) Any amount included in federal adjusted gross income for federal income tax purposes for the taxable year that is not included in federal adjusted gross income under this article for the taxable year;

(4) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the West Virginia Public Employees Retirement System, and the West Virginia State Teachers Retirement System, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes: *Provided*, That notwithstanding any provisions in this code to the contrary this modification shall be limited to the first \$2,000 of benefits received under the West Virginia Public Employees Retirement System, the West Virginia State Teachers Retirement System and, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes for taxable years beginning

after December 31, 1986; and the first \$2,000 of benefits received under any federal retirement system to which 4 U.S.C. § 111 applies: *Provided, however*, That the total modification under this paragraph shall not exceed \$2,000 per person receiving retirement benefits and this limitation shall apply to all returns or amended returns filed after December 31, 1988;

(6) Retirement income received in the form of pensions and annuities after December 31, 1979, under any West Virginia police, West Virginia Firemen's Retirement System or the West Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System or the West Virginia Deputy Sheriff Retirement System, including any survivorship annuities derived from any of these programs, to the extent includable in gross income for federal income tax purposes;

(7)(A) For taxable years beginning after December 31, 2000, and ending prior to January 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the Armed Forces of the United States of America with the product thereof multiplied by the first \$30,000 of military retirement income, including retirement income from the regular Armed Forces, Reserves and National Guard paid by the United States or by this state after December 31, 2000, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(B) For taxable years beginning after December 31, 2000, the first \$20,000 of military retirement income, including retirement income from the regular Armed Forces, Reserves and National Guard paid by the United States or by this state after December 31, 2002, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(C) For taxable years beginning after December 31, 2017, military retirement income, including retirement income from the regular Armed Forces, Reserves and National Guard paid by the United States or by this state after December 31, 2017, including any survivorship annuities, to the extent included in federal

adjusted gross income for the taxable year. For taxable years beginning after December 31, 2018, retirement income from the uniformed services, including the Army, Navy, Marines, Air Force, Space Force, Coast Guard, Public Health Service, National Oceanic Atmospheric Administration, reserves, and National Guard, paid by the United States or by this state after December 31, 2018, including any survivorship annuities, to the extent included in federal adjusted gross income for the taxable year.

(D) In the event that any of the provisions of this subdivision are found by a court of competent jurisdiction to violate either the Constitution of this state or of the United States, or is held to be extended to persons other than specified in this subdivision, this subdivision shall become null and void by operation of law.

(8) Decreasing modification for social security income.

(A) For taxable years beginning on or after January 1, 2022, 100 percent of the social security benefits received pursuant to Chapter 7 of Title 42 of the United States Code, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in 42 U.S.C. § 401 *et. seq.* or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in 42 U.S.C. § 1381 *et. seq.*, included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(B) of this code.

(B) The deduction allowed by §11-21-12(c)(8)(A) of this code are allowable only when the federal adjusted gross income of a married couple filing a joint return does not exceed \$100,000, or \$50,000 in the case of a single individual or a married individual filing a separate return.

(C) For taxable years beginning on and after January 1, 2024, 35 percent of the amount of social security benefits received pursuant to Chapter 7 of Title 42 of the United States Code, including, but not limited to, social security benefits paid by the

Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in 42 U.S.C. § 401 *et. seq.* or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in 42 U.S.C. § 1381 *et. seq.*, included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(F) of this code.

(D) For taxable years beginning on or after January 1, 2025, 65 percent of the social security benefits received pursuant to Chapter 7 of Title 42 of the United States Code, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in 42 U.S.C. § 401 *et. seq.* or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in 42 U.S.C. § 1381 *et. seq.*, included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(F) of this code.

(E) For taxable years beginning on or after January 1, 2026, 100 percent of the social security benefits received pursuant to Chapter 7 of Title 42 of the United States Code, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in 42 U.S.C. § 401 *et. seq.* or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in 42 U.S.C. 1381 *et. seq.*, included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(F) of this code.

(F) The deduction allowed by §11-21-12(c)(8)(C), §11-21-12(c)(8)(D), and §11-21-12(c)(8)(E) of this code are allowable only when the federal adjusted gross income of a married couple

filing a joint return exceeds \$100,000, or \$50,000 in the case of a single individual or a married individual filing a separate return.

(9) Federal adjusted gross income in the amount of \$8,000 received from any source after December 31, 1986, by any person who has attained the age of 65 on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That if a person has a medical certification from a prior year and he or she is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: *Provided, however*, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is \$8,000 per person or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is less than \$8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between \$8,000 and the sum of modifications under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection;

(10) Federal adjusted gross income in the amount of \$8,000 received from any source after December 31, 1986, by the surviving spouse of any person who had attained the age of 65 or who had been certified as permanently and totally disabled, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is \$8,000 or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is less than \$8,000 per

person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between \$8,000 and the sum of subdivisions (1), (2), (5), (6), (7), and (8) of this subsection;

(11) Contributions from any source to a medical savings account established by or for the individual pursuant to §33-15-20 or §33-16-15 of this code, plus interest earned on the account, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That the amount subtracted pursuant to this subdivision for any one taxable year may not exceed \$2,000 plus interest earned on the account. For married individuals filing a joint return, the maximum deduction is computed separately for each individual; and

(12) Any other income which this state is prohibited from taxing under the laws of the United States including, but not limited to, tier I retirement benefits as defined in Section 86(d)(4) of the Internal Revenue Code.

(d) Modification for West Virginia fiduciary adjustment. — There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under §11-21-19 of this code.

(e) Partners and S corporation shareholders. — The amounts of modifications required to be made under this section by a partner or an S corporation shareholder, which relate to items of income, gain, loss or deduction of a partnership or an S corporation, shall be determined under §11-21-17 of this code.

(f) Husband and wife. — If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

(g) Effective date. —

(1) Changes in the language of this section enacted in the year 2000 shall apply to taxable years beginning after December 31, 2000.

(2) Changes in the language of this section enacted in the year 2002 shall apply to taxable years beginning after December 31, 2002.

(3) Changes in the language of this section enacted in the year 2019 shall apply to taxable years beginning after December 31, 2018.

(4) Changes in the language of this section enacted in the year 2024 shall apply retroactively to taxable years beginning after December 31, 2023.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-28. Credit toward retirement for member's prior military service; credit toward retirement when employee has joined Armed Forces in time of armed conflict; qualified military service.

(a) For purposes of this section, the term "active military duty" means full-time active duty with the Armed Forces of the United States, namely the United States Air Force, Army, Coast Guard, Marines, Space Force, or Navy; and service with the National Guard or reserve military forces of any of the Armed Forces when the employee has been called to active full-time duty and has received no compensation during the period of the duty from any person other than the Armed Forces.

(b) Any member of the fund who has previously served on active military duty is entitled to and shall receive credit on the minimum period of service required by law for retirement pay from the service of the West Virginia State Police under the provisions of this article for a period equal to the active military duty not to exceed five years, subject to the following:

(1) That he or she has been honorably discharged from the Armed Forces;

(2) That he or she substantiates by appropriate documentation or evidence his or her period of active military duty;

(3) That he or she is not receiving credit from any other retirement system administered by the board for his or her active military duty; and

(4) That, except with respect to disability retirement pay awarded under §15-2-30 of this code, he or she has actually served with the fund for 20 years exclusive of his or her active military duty.

(c) The amount of retirement pay to which any member is entitled shall be calculated and determined as if he or she had been receiving for the period of his or her active military duty a monthly salary from the agency equal to the average monthly salary which he or she actually received from the agency for his or her total service with the agency exclusive of the active military duty. The superintendent shall transfer and pay into the fund from moneys appropriated for the agency, a sum equal to 18 percent of the aggregate of the salaries on which the retirement pay of all members has been calculated and determined for their periods of active military duty. In addition, any person who, while an employee of the agency was commissioned, enlisted or inducted into the Armed Forces of the United States or, being a member of the reserve officers' corps, was called to active duty in the Armed Forces between September 1, 1940, and the close of hostilities in World War II, or between June 27, 1950, and the close of the armed conflict in Korea on July 27, 1953, between August 1, 1964, and the close of the armed conflict in Vietnam, or during any other period of armed conflict by the United States whether sanctioned by a declaration of war by the Congress or by executive or other order of the President, is entitled to and shall receive credit on the minimum period of service required by law for retirement pay from the service of the West Virginia State Police for a period equal to the full time he or she has or shall, pursuant to the commission,

enlistment, induction or call, have served with the Armed Forces subject to the following:

(1) That he or she has been honorably discharged from the Armed Forces;

(2) That within 90 days after honorable discharge from the Armed Forces he or she has presented himself or herself to the superintendent and offered to resume service as an active employee of the agency; and

(3) That he or she has made no voluntary act, whether by reenlistment, waiver of discharge, acceptance of commission or otherwise, to extend or participate in extension of the period of service with the Armed Forces beyond the period of service for which he or she was originally commissioned, enlisted, inducted or called.

(d) That amount of retirement pay to which any employee is entitled shall be calculated and determined as if the employee has continued in the active service of the agency at the rank or grade to him or her appertaining at the time of the commission, induction, enlistment or call, during a period coextensive with the time the employee served with the Armed Forces pursuant to the commission, induction, enlistment or call. The superintendent of the agency shall transfer and pay each month into the fund from moneys appropriated for the agency a sum equal to 18 percent of the aggregate of salary which all employees would have been entitled to receive had they continued in the active service of the agency during a period coextensive with the time the employee served with the Armed Forces pursuant to the commission, induction, enlistment or call: *Provided*, That the total amount of military service credit allowable under this section shall not exceed five years.

(e) Notwithstanding any of the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in

Section 414(u) of the Internal Revenue Code. The board may determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in §5-10D-1 of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

***§15-2A-2. Definitions.**

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

(1) "Accumulated contributions" means the sum of all amounts deducted from base salary, together with four percent interest compounded annually.

(2) "Active military duty" means full-time active duty with the armed forces of the United States, namely, the United States Air Force, Army, Coast Guard, Marines, Space Force, or Navy; and service with the National Guard or reserve military forces of any of the armed forces when the employee has been called to active full-time duty.

(3) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(4) "Agency" means the West Virginia State Police.

(5) "Base salary" means compensation paid to an employee without regard to any overtime pay.

***NOTE:** This section was also amended by H. B. 2053 (Chapter 177), which passed prior to this Act and S. B. 35 (Chapter 156), which passed subsequent to this Act.

(6) "Beneficiary" means a surviving spouse or other surviving beneficiary who is entitled to, or will be entitled to, an annuity or other benefit payable by the fund.

(7) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D- 1 *et seq.* of this code.

(8) "Dependent child" means any unmarried child or children born to or adopted by a member or retirant of the fund who:

(A) Is under the age of 18;

(B) After reaching 18 years of age, continues as a full-time student in an accredited high school, college, university or business or trade school until the child or children reaches the age of 23 years; or

(C) Is financially dependent on the member or retirant by virtue of a permanent mental or physical disability upon evidence satisfactory to the board.

(9) "Dependent parent" means the member's or retirant's parent or step-parent claimed as a dependent by the member or retirant for federal income tax purposes at the time of the member's or retirant's death.

(10) "Employee" means any person regularly employed in the service of the agency as a law-enforcement officer after March 12, 1994, and who is eligible to participate in the fund.

(11) "Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, the West Virginia Code of State Regulations, or the relevant provisions of both the West Virginia Code and the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(12) "Final average salary" means the average of the highest annual compensation received for employment with the agency, including compensation paid for overtime service, received by the

employee during any five calendar years within the employee's last 10 years of service: *Provided*, That annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

(13) "Fund", "plan", "system" or "retirement system" means the West Virginia State Police Retirement Fund created and established by this article.

(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(15) "Law-enforcement officer" means an individual employed or otherwise engaged in either a public or private position which involves the rendition of services relating to enforcement of federal, state or local laws for the protection of public or private safety, including, but not limited to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any other law-enforcement position which requires certification, but excluding positions held by elected sheriffs or appointed chiefs of police whose duties are purely administrative in nature.

(16) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

(17) "Member" means any person who has contributions standing to his or her credit in the fund and who has not yet entered into retirement status.

(18) "Month of service" means each month for which an employee is paid or entitled to payment for at least one hour of service for which contributions were remitted to the fund. These months shall be credited to the member for the calendar year in which the duties are performed.

(19) "Partially disabled" means an employee's inability, on a probable permanent basis, to perform the essential duties of a law-enforcement officer by reason of any medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months, but which impairment does not preclude the employee from engaging in other types of nonlaw-enforcement employment.

(20) "Physical or mental impairment" means an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.

(21) "Plan year" means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(22) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(23) "Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which he or she retires or otherwise separates from service with the agency.

(24) "Retirant" or "retiree" means any member who commences an annuity payable by the retirement system.

(25) "Salary" means the compensation of an employee, excluding any overtime payments.

(26) "Surviving spouse" means the person to whom the member or retirant was legally married at the time of the member's or retirant's death and who survived the member or retirant.

(27) "Totally disabled" means an employee's probable permanent inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subdivision, an employee is totally disabled only if his or her physical or mental impairments are so severe that he or she is not only unable to perform his or her previous work as an employee of the agency, but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the employee lives; (B) a specific job vacancy exists; or (C) the employee would be hired if he or she applied for work.

(28) "Years of service" means the months of service acquired by a member while in active employment with the agency divided by 12. Years of service shall be calculated in years and fraction of a year from the date of active employment of the member with the agency through the date of termination of employment or retirement from the agency. If a member returns to active employment with the agency following a previous termination of employment with the agency and the member has not received a refund of contributions plus interest for the previous employment under §15-2A-8 of this code, service shall be calculated separately for each period of continuous employment and years of service shall be the total service for all periods of employment. Years of service shall exclude any periods of employment with the agency for which a refund of contributions plus interest has been paid to the member unless the employee repays the previous withdrawal, as provided in §15-2A-8 of this code, to reinstate the years of service.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-17a. Qualified military service.

(a) Except as provided in subsection (b) of this section, for the purpose of this article, the retirement board shall grant prior service

credit to members of the retirement system who were honorably discharged from active duty service in any of the Armed Forces of the United States in any period of national emergency within which a federal Selective Service Act was in effect. For purposes of this section, "Armed Forces" includes Women's Army Corps, women's appointed volunteers for emergency service, Army Nurse Corps, SPARS, Women's Reserve and other similar units officially part of the military service of the United States. The military service is considered equivalent to public school teaching, and the salary equivalent for each year of that service is the actual salary of the member as a teacher for his or her first year of teaching after discharge from military service. Prior service credit for military service shall not exceed 10 years for any one member, nor shall it exceed 25 percent of total service at the time of retirement. Notwithstanding the preceding provisions of this subsection, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in §5-10D-1 of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code. No military service credit may be used in more than one retirement system administered by the Consolidated Public Retirement Board.

(b) Subsection (a) of this section does not apply to any member who first becomes an employee of a participating public employer on or after July 1, 2015. This subsection applies to any member who first became an employee of a participating public employer on or after July 1, 2015, and also applies to any member who became an employee of a participating public employer before July 1, 2015, and is unable to meet the requirements of subsection (a) of this section.

(1) Any member may purchase up to 60 months of military service credit for time served in active military duty prior to first

becoming an employee of a participating public employer if all of the following conditions are met:

(A) The member has completed a complete fiscal year of contributory service;

(B) The active military duty occurs prior to the date on which the member first becomes an employee of a participating public employer; and

(C) The employee pays to the retirement system the actuarial reserve purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system, or within 48 months of July 1, 2015, whichever is later: *Provided*, That any employee who ceases employment with a participating public employer before completing the required actuarial reserve purchase amount in full shall not be eligible to purchase the military service.

(2) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first becomes an employee of a participating public employer on or after July 1, 2015, but who does not remain employed and contributing to the retirement system for at least a complete fiscal year after his or her initial employment, shall be considered to have met the requirement of said paragraph the first time he or she becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service. Such a member shall be considered to have met the requirement of paragraph (C) of said subdivision if he or she pays to the retirement system the actuarial reserve purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member the first time he or she becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(3) A member who first becomes an employee of a participating public employer on or after July 1, 2015, may purchase military service credit for active military duty performed on or after the date he or she first becomes an employee of a participating public employer only if all of the following conditions are met: *Provided*, That the maximum military service credit such member may purchase shall take into account any military service credit purchased for active military duty pursuant to subdivision (1) of this subsection in addition to any military service credit purchased pursuant to this subdivision:

(A) The member was an employee of a participating public employer, terminated employment and experienced a break in contributing service in the retirement system of one or more months, performed active military service while not an employee of the participating public employer and not contributing to the retirement system, then again becomes an employee of a participating public employer and completes at least a complete fiscal year of contributory service;

(B) The member does not qualify for military service credit for such active military duty pursuant to subsection (d) of this section; and

(C) The member pays to the retirement system the actuarial reserve purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member after he or she again becomes an employee of a participating public employer immediately following the period of active military duty and break in service and completes at least a complete fiscal year of contributory service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(4) Notwithstanding paragraph (A), subdivision (3) of this subsection, a member who otherwise meets the requirements of said paragraph, but who does not remain employed and contributing to the retirement system for at least a complete fiscal year when he or she first becomes an employee of a participating

public employer after the period of active military duty and break in service, shall be considered to have met the requirement of said paragraph the first time he or she again becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service. Such a member shall be considered to have met the requirement of paragraph (C) of said subdivision if he or she pays to the retirement system the actuarial reserve purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member for the first time he or she again becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(5) For purposes of this subsection, the following definitions shall apply:

(A) "Active military duty" means full-time active duty in the Armed Forces of the United States for a period of 30 or more consecutive calendar days. Active military duty does not include inactive duty of any kind.

(B) "Actuarial reserve purchase amount" means the purchase annuity rate multiplied by the purchase accrued benefit, calculated as of the calculation month, plus annual interest accruing at 7.5 percent from the calculation month through the purchase month, compounded monthly.

(C) "Armed forces of the United States" means the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard, the reserve components thereof, and the National Guard of the United States or the National Guard of a state or territory when members of the same are on full-time active duty pursuant to Title 10 or Title 32 of the United States Code.

(D) "Calculation month" means the month immediately following the month in which the member completes a complete fiscal year of contributory service with a participating public

employer required by subdivision (1), (2), (3) or (4) of this subsection, as applicable.

(E) "Purchase accrued benefit" means two percent times the purchase military service times the purchase average monthly salary.

(F) "Purchase age" means the age of the employee in years and completed months as of the first day of the calculation month.

(G) "Purchase annuity rate" means the actuarial lump sum annuity factor calculated as of the calculation month based on the following actuarial assumptions: Interest rate of 7.5 percent; mortality of the 1971 group annuity mortality table, 50 percent blended male and female rates, applied on a unisex basis to all members; if purchase age is under age 62, a deferred annuity factor with payments commencing at age 62; and if purchase age is 62 or over, an immediate annuity factor with payments starting at the purchase age.

(H) "Purchase average monthly salary" means the average monthly salary of the member during the number of months of the member's contract during the fiscal year of contributory service required by subdivisions (1), (2), (3) and (4) of this subsection, as applicable. For any member who first became an employee of a participating public employer before July 1, 2015, the purchase average monthly salary means the average monthly salary of the member during the number of months of the member's contract during his or her complete fiscal year of contributory service on or after July 1, 2015.

(I) "Purchase military service" means the amount of military service being purchased by the employee in months up to the 60-month maximum, calculated in accordance with subdivision (7) of this subsection.

(J) "Purchase month" means the month in which the employee deposits the actuarial reserve lump sum purchase amount into the plan trust fund in full payment of the service credit being purchased or makes the final payment of the actuarial reserve purchase

amount into the plan trust fund in full payment of the service credit being purchased.

(6) A member may purchase military service credit for a period of active military duty pursuant to this subsection only if the member received an honorable discharge for the period. Anything other than an honorable discharge, including, but not limited to, a general or under honorable conditions discharge, an entry-level separation discharge, an other than honorable conditions discharge or a dishonorable discharge, shall disqualify the member from receiving military service credit for the period of service. The board shall require a member requesting military service credit to provide official documentation establishing that the requirements set forth in this subsection have been met.

(7) To calculate the amount of military service credit a member may purchase, the board shall add the total number of days in each period of a member's active military duty eligible to be purchased, divide the total by 30, and round up or down to the nearest integer (fractions of 0.5 shall be rounded up), in order to yield the total number of months of military service credit a member may purchase, subject to the 60-month maximum. A member may purchase all or part of the maximum amount of military service credit he or she is eligible for in one-month increments.

(8) To receive credit, a member must submit a request to purchase military service credit to the board, on such form or in such other manner as shall be required by the board, within the complete fiscal year period required by subdivision (1), (2), (3) or (4) of this subsection, as applicable. The board shall then calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the member within the 48-month period required by said subdivisions, as applicable. A member purchasing military service credit pursuant to this subsection must do so in a single, lump sum payment: *Provided*, That the board may accept partial, installment or other similar payments if the employee executes a contract with the board specifying the amount of military service to be purchased and the payments required: *Provided, however*, That any failure to pay the contract amount in accordance with this section shall be treated as an overpayment or excess contribution

subject to §18-7A-14c of this code and no military service shall be credited.

(9) The board shall require a member requesting military service credit to provide official documentation establishing that the requirements set forth in this subsection have been met.

(10) Military service credit purchased pursuant to this subsection shall not be considered contributing service credit or contributory service for purposes of this article.

(11) If a member who has purchased military service credit pursuant to this subsection is eligible for and requests a withdrawal of accumulated contributions pursuant to the provisions of this article, he or she shall also receive a refund of the actuarial reserve purchase amount he or she paid to the retirement system to purchase military service credit, together with regular interest on such amount.

(c) No period of military service shall be used to obtain credit in more than one retirement system administered by the board and once used in any system, a period of military service may not be used again in any other system.

(d) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code and the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same may be amended from time to time. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code.

(e) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board has final power to determine the period. The board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in §18-10D-1 of this code, may propose rules to administer this section for

legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code.

ARTICLE 10F. DISABLED PERSONS AND PUBLIC USE BUILDINGS AND FACILITIES.

§18-10F-2. Enactment of Interstate Compact.

The Interstate Compact on Educational Opportunity for Military Children is hereby enacted into law and entered into by the State of West Virginia with any and all states legally joining therein in accordance with its terms, in the form substantially as follows:

INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN ARTICLE I. PURPOSE.

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

(a) Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from a previous school district or variations in entrance or age requirements;

(b) Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content or assessment;

(c) Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic and social activities;

(d) Facilitating the on-time graduation of children of military families;

(e) Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact;

(f) Providing for the uniform collection and sharing of information between and among member states, schools and military families under this compact;

(g) Promoting coordination between this compact and other compacts affecting military children; and

(h) Promoting flexibility and cooperation between the educational system, parents and students in order to achieve educational success for students.

ARTICLE II. DEFINITIONS.

As used in this article and compact, unless the context clearly requires a different meaning:

(a) "Active duty" means full-time duty status in any of the active uniformed services of the United States, including service in the National Guard and Reserve pursuant to active duty orders in accordance with 10 U.S.C. Sections 1209 and 1211;

(b) "Child of a military family" means any school-aged child enrolled in any of grades kindergarten through twelfth who is in the household of an active duty uniformed services member;

(c) "Compact commissioner" means the voting representative of a compacting state appointed pursuant to Article VIII of this compact;

(d) "Deployment" means the time period beginning one month prior to a uniformed services member's departure from his or her home station on military orders and ending six months after return to his or her home station;

(e) "Education records" means all documents, files, data and official records directly related to a student and maintained by a school or county board. This includes all material kept in the student's cumulative file, such as but not limited to generally-identifying data, attendance records, academic work completion records, achievement records, evaluative test results, health data,

disciplinary records, test protocols, and individualized education program or service records;

(f) "Extracurricular activities" means voluntary activities sponsored by a school, a county board or an organization sanctioned by a county board or the state board of education. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, organizations and clubs;

(g) "Interstate Commission on Educational Opportunity for Military Children" or "Interstate Commission" means the Commission that is created by Article IX of this compact;

(h) "County board" means a county board of education, which is the public entity legally constituted by this state as an administrative agency to provide control of and direction for grades kindergarten through twelfth in the public schools in the county in which it operates;

(i) "Member state" means a state that has enacted this compact;

(j) "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other facility under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands or any other United States Territory. "Military installation" does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects;

(k) "Non-member state" means a state that has not enacted this compact;

(l) "Receiving state" means a state to which a child of a military family is sent, brought, or caused to be sent or brought;

(m) "Rule" means a written statement by the Interstate Commission which:

(1) Is promulgated pursuant to Article XII of this compact;

(2) Is of general applicability;

(3) Implements, interprets or prescribes a policy or provision of this compact, or an organizational, procedural, or practice requirement of the Interstate Commission;

(4) Has the force and effect of statutory law in a member state; and

(5) May be amended, repealed, or suspended by act of the Interstate Commission;

(n) "Sending state" means a state from which a child of a military family is sent, brought, or caused to be sent or brought;

(o) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other United States Territory;

(p) "Student" means a child of a military family who is formally enrolled in any of grades kindergarten through twelfth and for whom a county board receives public funding;

(q) "Transition" means:

(1) The formal and physical process of transferring from one school to another; or

(2) The period of time during which a student moves from one school in a sending state to another school in the receiving state;

(r) "Uniformed services" means the Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard, and the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services;

(s) "Veteran" means a person who performed active duty service and was discharged or released therefrom under conditions other than dishonorable; and

(t) "The West Virginia Council for Educational Opportunity for Military Children" or "West Virginia Council" means the state coordinating council established in Article VIII of this compact.

ARTICLE III. APPLICABILITY.

(a) This compact applies to:

(1) Each county board of education; and

(2) The children of:

(A) Active duty members of the uniformed services as defined in this compact, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Sections 1209 and 1211;

(B) Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement; and

(C) Members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one (1) year after death.

(b) Except as provided in subsection (a) of this Article III, this compact does not apply to the children of:

(1) Inactive members of the National Guard or military reserves;

(2) Retired members of the uniformed services;

(3) Veterans of the uniformed services;

(4) Other United States Department of Defense personnel; nor

(5) Any other federal agency civilian or contract employees not defined as active duty members of the uniformed services.

ARTICLE IV. EDUCATIONAL RECORDS & ENROLLMENT.

(a) *Unofficial or "hand-carried" education records* —

In the event that official education records cannot be released to a student's parents or legal guardians for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parents a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. As quickly as possible upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records.

(b) Official education records/transcripts —

Simultaneous with the enrollment and conditional placement of a student, the school in the receiving state shall request the student's official education records from the school in the sending state. Upon receipt of this request, the school in the sending state shall process and furnish the official education records to the school in the receiving state within 10 days or such other time period as is determined reasonable under the rules promulgated by the Interstate Commission.

(c) Immunizations —

(1) A county board shall allow a student 30 days from the date of enrollment to obtain any required immunizations, or such other time period as is determined reasonable under the rules promulgated by the Interstate Commission.

(2) In any case where a series of immunizations is required, the student shall obtain the initial vaccination within 30 days of enrollment, or such other time period as is determined reasonable under the rules promulgated by the Interstate Commission.

(d) Enrollment at current grade level —

(1) A student shall be permitted to enroll in the grade level in this state, including kindergarten, which is commensurate with the grade level in which he or she was enrolled in the sending state at the time of transition, regardless of his or her age.

(2) A student that has satisfactorily completed the prerequisite grade level in the sending state is eligible for enrollment in the next highest grade level in this state, regardless of his or her age.

ARTICLE V. PLACEMENT & ATTENDANCE.

(a) *Course placement* —

(1) When a student transfers to this state before or during the school year, the school in this state shall initially place the student in educational courses based on the courses in which he or she was enrolled in the sending state, educational assessments conducted at the school in the sending state, or both, if the courses are offered at the school to which the student is transferring. This course placement provision includes, but is not limited to Honors, International Baccalaureate, Advanced Placement, vocational, technical and career pathways courses.

(2) A school shall give paramount consideration to continuing a student's academic program from the previous school, and promoting placement in academically and career-challenging courses, when considering course placement.

(3) A school is not precluded from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in any course.

(b) *Educational program placement* —

When a student transfers to this state, the school shall initially place the student in educational programs based on current educational assessments conducted at the school in the sending state or participation or placement in like programs in the sending state. Such programs include, but are not limited to gifted and talented programs and English as a second language (ESL). A school is not precluded from performing subsequent evaluations to ensure appropriate placement of the student.

(c) *Special education services* —

(1) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. Section 1400 *et seq.* a school in this state shall initially provide comparable services to a student with disabilities based on his or her current Individualized Education Program (IEP); and

(2) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C.A. Section 794 (Section 504), and with Title II of the Americans with Disabilities Act, 42 U.S.C.A. Sections 12131-12165 (Title II), any school in this state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing Section 504 or Title II plan, to provide the student with equal access to education. The school is not precluded from performing subsequent evaluations to ensure appropriate placement of the student.

(d) *Placement flexibility* —

County board administrative officials have flexibility in waiving course and program prerequisites, or other preconditions for placement in courses or programs offered under the authority of the county board.

(e) *Absence as related to deployment activities* —

A student whose parent or legal guardian is an active duty member of the uniformed services and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the county superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

ARTICLE VI. ELIGIBILITY.

(a) *Eligibility for enrollment* —

(1) Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law is

sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

(2) A county board may not charge local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a school district other than that of the custodial parent.

(3) A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a school district other than that of the custodial parent, may continue to attend the school in which he or she was enrolled while residing with the custodial parent.

(b) Eligibility for extracurricular participation —

The State Board of Education and county boards shall facilitate the opportunity for transitioning military children to be included in extracurricular activities, regardless of application deadlines, to the extent the children are otherwise qualified.

ARTICLE VII. GRADUATION.

In order to facilitate the on-time graduation of children of military families the State Board of Education and each county board shall incorporate the following procedures:

(a) Waiver requirements —

County board administrative officials shall either waive specific courses required for graduation if a student has satisfactorily completed similar course work in another local education agency, or provide reasonable justification for denial. If a waiver is not granted to a student who would qualify to graduate from the sending school, the county board shall provide an alternative means of acquiring required coursework so that the student may graduate on time.

(b) Exit exams —

Any school in this state shall accept:

(1) Exit or end-of-course exams required for graduation from the sending state;

(2) National norm-referenced achievement tests; or

(3) Alternative testing, in lieu of testing requirements for graduation in the receiving state. In the event that the alternatives in this subsection cannot be accommodated by a school for a student transferring in his or her senior year, then the provisions of subsection (c) of Article VII of this compact apply.

(c) *Transfers during senior year* —

If a student transferring at the beginning of or during his or her senior year is ineligible to graduate from a school in this state after all alternatives have been considered, the county board and the local education agency in the sending state shall ensure that the student receives a diploma from the sending state, if the student meets the graduation requirements of the local education agency in the sending state. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with subsections (a) and (b) of this Article VII.

ARTICLE VIII. STATE COORDINATION.

(a) The West Virginia Council for Educational Opportunity for Military Children is hereby established for the purpose of coordinating entities in this state regarding participation in the Interstate Compact on Educational Opportunity for Military Children.

(b) Membership of the Council consists of at least six members as follows:

(1) The State Superintendent of Schools;

(2) The superintendent of a county board in the state which has a high concentration of military children, appointed by the Governor. If the Governor determines there is not a county school district that contains a high concentration of military children, he

or she may appoint a superintendent from any county school district to represent county boards on the State Council;

(3) An individual representing a military installation in this state appointed by the Governor by and with the advice and consent of the Senate. This member serves a term of four years, except that the term of the individual initially appointed expires June 30, 2015. Each subsequent term begins on July 1 in the year of appointment.

(4) An individual representing the executive branch of government, appointed by the Governor;

(5) One member of the West Virginia Senate, appointed by the President of the West Virginia Senate; and

(6) One member of the West Virginia House of Delegates, appointed by the Speaker of the West Virginia House of Delegates.

(c) The Governor shall appoint a Compact Commissioner who is responsible for administering and managing the state's participation in the compact. The Governor may select the Commissioner from members appointed to the Council as provided in subsection (b) of this Article VIII, or may appoint another individual to serve in this capacity. A individual who is not already a full voting member of the Council becomes an ex-officio member of the Council if appointed as Commissioner.

(d) The West Virginia Council has and may exercise all powers necessary or appropriate to carry out and effectuate the purpose and intent of this compact, including, but not limited to the following:

(1) Facilitate coordination among state agencies and governmental entities of West Virginia, including county boards and military installations, concerning the state's participation in, and compliance with, this compact and Interstate Commission activities; and

(2) Appoint or designate a military family education liaison to assist military families and the state in facilitating implementation of the compact. This individual becomes an ex-officio member of

the West Virginia Council if he or she is not already a full voting member of the Council when so appointed or designated.

ARTICLE IX. INTERSTATE COMMISSION ON
EDUCATIONAL OPPORTUNITY FOR MILITARY
CHILDREN.

(a) The member states hereby create the "Interstate Commission on Educational Opportunity for Military Children." The activities of the Interstate Commission are the formation of public policy and are a discretionary state function.

(b) The Interstate Commission:

(1) Is a body corporate and joint agency of the member states and has all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective Legislatures of the member states in accordance with the terms of this compact;

(2) Consists of one Interstate Commission voting representative from each member state who is that state's Compact Commissioner.

(A) Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

(B) A majority of the total member states constitutes a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(C) A representative may not delegate a vote to another member state. In the event a Compact Commissioner is unable to attend a meeting of the Interstate Commission, the Governor or State Council of the Compact Commissioner's state may delegate voting authority to another person from that state for a specified meeting.

(D) The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication;

(3) Consists of ex-officio, nonvoting representatives who are members of interested organizations. Such ex-officio members, as defined in the bylaws, may include, but are not limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the United States Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military members;

(4) Meets at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings;

(5) Establishes an executive committee, whose members shall include the officers of the Interstate Commission and such other members of the Interstate Commission as established in the bylaws. Each member of the executive committee serves a one-year term. Each member of the executive committee is entitled to one vote. The executive committee has the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the daily activities of the administration of the compact, including enforcement and compliance with the provisions of the compact, its bylaws and rules, and such other duties as it determines are necessary. A representative of the United States Department of Defense serves as an ex-officio, nonvoting member of the executive committee;

(6) Establishes bylaws and rules that provide for conditions and procedures under which the Interstate Commission makes its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests;

(7) Gives public notice of all meetings. All meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its

committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

(A) Relate solely to the Interstate Commission's internal personnel practices and procedures;

(B) Disclose matters specifically exempted from disclosure by federal and state statute;

(C) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(D) Involve accusing a person of a crime, or formally censuring a person;

(E) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(F) Disclose investigative records compiled for law enforcement purposes; or

(G) Specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding;

(8) Causes its legal counsel or designee to certify that a meeting may be closed, and reference each relevant exemptable provision for any meeting or portion of a meeting which is closed pursuant to this provision. The Interstate Commission shall maintain a minute record of each meeting which shall fully and clearly describe all matters discussed in the meeting. The minute record shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in the minute record. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission.

(9) Collects standardized data concerning the educational transition of the children of military families under this compact as directed through its rules. The rules shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules; and

(10) Creates a process that permits military officials, education officials and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This subdivision does not create a private right of action against the Interstate Commission or any member state.

ARTICLE X. POWERS AND DUTIES OF THE INTERSTATE COMMISSION.

The Interstate Commission has the following powers:

(a) To provide for dispute resolution among member states;

(b) To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact. The rules have the force and effect of statutory law and are binding in the compact states to the extent and in the manner provided in this compact;

(c) To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the compact, its bylaws, rules and actions;

(d) To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;

(e) To establish and maintain offices which shall be located within one or more of the member states;

(f) To purchase and maintain insurance and bonds;

(g) To borrow, accept, hire or contract for services of personnel;

(h) To establish and appoint committees including, but not limited to, an executive committee as required by Article IX of this compact, which have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder;

(i) To elect or appoint such officers, attorneys, employees, agents or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

(j) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of such;

(k) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;

(l) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed;

(m) To establish a budget and make expenditures;

(n) To adopt a seal and bylaws governing the management and operation of the Interstate Commission;

(o) To report annually to the Legislatures, Governors, Judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year.

Such reports also shall include any recommendations that may have been adopted by the Interstate Commission;

(p) To coordinate education, training and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity;

(q) To establish uniform standards for reporting, collecting and exchanging data;

(r) To maintain corporate books and records in accordance with the bylaws;

(s) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact; and

(t) To provide for the uniform collection and sharing of information between and among member states, schools and military families under this compact.

ARTICLE XI. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION.

(a) The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the Interstate Commission;

(2) Establishing an executive committee, and such other committees as may be necessary;

(3) Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;

(4) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each meeting;

(5) Establishing the titles and responsibilities of the officers and staff of the Interstate Commission;

(6) Providing a mechanism for concluding the operations of the Interstate Commission and the returning surplus funds that may exist upon termination of the compact after the payment and reserving of all of its debts and obligations; and

(7) Providing start-up rules for initial administration of the compact.

(b) The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected serve without compensation or remuneration from the Interstate Commission. Subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

(c) *Executive Committee, Officers and Personnel* —

(1) The executive committee has such authority and duties as may be set forth in the bylaws, including but not limited to:

(A) Managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

(B) Overseeing an organizational structure within, and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

(C) Planning, implementing, and coordinating communications and activities with other state, federal and local

government organizations in order to advance the goals of the Interstate Commission.

(2) The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the Interstate Commission may deem appropriate. The executive director serves as secretary to the Interstate Commission, but is not a Member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

(d) The Interstate Commission's executive director and its employees are immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities. The executive director and employees are not protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(1) The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of employment or duties for acts, errors, or omissions occurring within his or her state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. This subsection does not protect the executive director or employees from suit or liability for damage, loss, injury, or liability caused by his or her intentional or willful and wanton misconduct.

(2) The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall

defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(3) To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against the individual arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the individual had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of the individual.

ARTICLE XII. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION.

(a) *Rulemaking Authority* —

The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Interstate Commission is invalid and has no force nor effect.

(b) *Rulemaking Procedure* —

Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative

Procedure Act," of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

(c) Not later than 30 days after a rule is promulgated, any person may file a petition for judicial review of the rule. Filing such a petition does not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and may not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

(d) If a majority of the Legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then that rule has no further force nor effect in any compacting state.

ARTICLE XIII. OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION.

(a) *Oversight* —

(1) The executive, legislative and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

(2) All courts shall take judicial notice of this compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission.

(3) The Interstate Commission is entitled to receive all service of process in any such proceeding, and has standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission renders a judgment or order

void as to the Interstate Commission, this compact or promulgated rules.

(b) *Default, Technical Assistance, Suspension and Termination*

If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the Interstate Commission shall:

(1) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default; and

(2) Provide remedial training and specific technical assistance regarding the default.

(3) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(4) Suspension or termination of membership in the compact may be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state's Legislature, and each of the member states.

(5) The state which has been suspended or terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

(6) The Interstate Commission does not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(7) The defaulting state may appeal the action of the Interstate Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(c) Dispute Resolution —

(1) The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and nonmember states.

(2) The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(d) Enforcement —

(1) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) The Interstate Commission may by majority vote of the members initiate legal action in the United State District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(3) The remedies herein are not the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself

of any other remedies available under state law or the regulation of a profession.

ARTICLE XIV. FINANCING OF THE INTERSTATE COMMISSION.

(a) The Interstate Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

(b) The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

(c) The Interstate Commission may not incur obligations of any kind prior to securing the funds adequate to meet the same; nor may the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

(d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited annually by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT.

(a) Any state is eligible to become a member state.

(b) This compact became effective and binding upon legislative enactment of the compact into law by ten states in July 2008. It becomes effective and binding as to any other member

state upon enactment of the compact into law by that state. The Governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

(c) The Interstate Commission may propose amendments to the compact for enactment by the member states. An amendment does not become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

AND ARTICLE XVI. WITHDRAWAL DISSOLUTION.

(a) *Withdrawal* —

(1) Once effective, the compact continues in force and remains binding upon each member state. A member state may withdraw from the compact upon repealing the specific statute that enacted the compact into law.

(2) Withdrawal from the compact occurs by repeal of the enacting statute, but withdrawal does not take effect until one year after the effective date of the repealing legislation and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other member state.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of any legislation to repeal this compact in the withdrawing state. The Interstate Commission shall notify the other member states of the withdrawing state's potential to withdraw within 60 days of receiving notice.

(4) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of a member state shall occur if the withdrawing state reenacts the compact or upon such later date as may be determined by the Interstate Commission.

(b) *Dissolution of Compact* —

(1) This compact shall dissolve effective upon the date of the withdrawal or default of any member state which reduces the membership in the compact to one member state.

(2) Upon the dissolution of this compact, the compact becomes null and void and is of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVII. SEVERABILITY AND CONSTRUCTION.

(a) The provisions of this compact are severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact are enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

(c) Nothing in this compact prohibits the applicability of any other interstate compact to which the states are members.

ARTICLE XVIII. BINDING EFFECT OF COMPACT AND
OTHER LAWS.

(a) *Other Laws* —

(1) Nothing in this compact prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

(2) All member states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) *Binding Effect of the Compact* —

(1) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

(2) All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

(3) In the event any provision of this compact exceeds the constitutional limits imposed on the Legislature of any member state, that provision is ineffective to the extent of the conflict with the constitutional provision in question in that member state.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-6. Review of certification.

Certification of each West Virginia law-enforcement officer shall be reviewed annually following the first certification and until such time as the officer may achieve exempt rank. Certification may be revoked, suspended or not renewed if any law-enforcement officer fails to attend annually an in-service approved law-enforcement training program, or if a law-enforcement officer achieving exempt rank fails to attend biennially an approved in-service supervisory level training program. When a law-enforcement officer is a member of the United States Air Force, Army, Coast Guard, Marines, Space Force, or Navy, or a member of the national guard or reserve military forces of any such armed forces, and has been called to active duty, resulting in separation from a law-enforcement agency for more than 12 months but less than 24 months, he or she shall attend and complete the mandated in-service training for the period and rank and qualify with his or her firearm within 90 days from his or her reappointment as a law-enforcement officer by a law-enforcement agency.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 31. UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT.

§48-31-102. Definitions.

In this article:

(1) "Adult" means an individual who has attained 18 years of age or an emancipated minor.

(2) "Caretaking authority" means the right to live with and care for a child on a day-to-day basis. The term includes physical custody, parenting time, right to access, and visitation.

(3) "Child" means:

(A) An unemancipated individual who has not attained 18 years of age; or

(B) An adult son or daughter by birth or adoption, or under law of this state other than this article, who is the subject of a court order concerning custodial responsibility.

(4) "Close and substantial relationship" means a relationship in which a significant bond exists between a child and a nonparent.

(5) "Court" means a tribunal, authorized under law of this state other than this article to make, enforce, or modify a decision regarding custodial responsibility.

(6) "Custodial responsibility" has the same meaning as in §48-1-219 of this code.

(7) "Decision-making authority" means the power to make important decisions regarding a child, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caretaking authority.

(8) "Deploying parent" means a service member, who is deployed or has been notified of impending deployment and is:

(A) A parent of a child under law of this state other than this article; or

(B) An individual who has custodial responsibility for a child under law of this state other than this article;

(9) "Deployment" means the movement or mobilization of a service member for more than ninety days but less than 18 months pursuant to uniformed service orders that:

(A) Are designated as unaccompanied;

(B) Do not authorize dependent travel; or

(C) Otherwise do not permit the movement of family members to the location to which the service member is deployed.

(10) "Family member" means a sibling, aunt, uncle, cousin, step-parent or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state other than this article.

(11) "Limited contact" means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the residence of the child.

(12) "Nonparent" means an individual other than a deploying parent or other parent.

(13) "Other parent" means an individual who, in common with a deploying parent, is:

(A) A parent of a child under law of this state other than this article; or

(B) An individual who has custodial responsibility for a child under law of this state other than this article.

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) "Return from deployment" means the conclusion of a service member's deployment as specified in uniformed service orders.

(16) "Service member" means a member of a uniformed service.

(17) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound or process.

(18) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(19) "Uniformed service" means:

(A) Active and reserve components of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard of the United States;

(B) The United States Merchant Marine;

(C) The commissioned corps of the United States Public Health Service;

(D) The commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(E) The National Guard of a state.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 16. THE MILITARY SERVICE MEMBERS COURT ACT.

§62-16-3. Definitions.

For the purposes of this article:

"Assessment" means an evaluation to determine whether a criminal defendant is a military service member as defined by this section, that the offense he or she has been charged with are

attributable to their military service, and if the offender would benefit from the provisions set forth in this article.

"Court" means a Military Service Members Court.

"Department" means the West Virginia Department of Veterans' Assistance.

"Military Service Members Court program" or "program" is a program that includes pre-adjudicatory and post-adjudicatory treatment for military service members.

"Military service member" means a person who is currently serving in the Army, Air Force, Marines, Navy, Space Force, or Coast Guard on active duty, reserve status, or in the National Guard, or a person who served in the active military, or who was discharged or released under conditions other than dishonorable.

"Offender" means a criminal defendant who qualifies as a military service member under this article.

"Post-adjudicatory program" means a program in which the offender has admitted guilt or has been found guilty and agrees, with the prosecutor's consent, to enter a court program as part of his or her sentence.

"Pre-adjudicatory program" means a program that allows the offender, with the consent of the prosecutor, team, and the court to expedite the offender's criminal case before conviction or before filing of a criminal case and requires the offender to agree to and successfully complete the court program as part of the written agreement.

"VA" means the United States Department of Veterans Affairs.

"VJO" means the Veterans Justice Outreach program of the United States Department of Veterans Affairs.

"Written agreement" means the agreement executed to allow a military service member to participate in a court program.

CHAPTER 178

**(Com. Sub. for H. B. 2718 - By Delegates McGeehan,
Hanshaw (Mr. Speaker), Masters, Worrell, Horst,
Funkhouser, J. Cannon, Hornby, and Leavitt)**

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding a new section, designated §18B-1D-12, relating to creating a State Advisory Council on Establishing a Military College; creating a state advisory council; providing the council's purpose; providing for the council's membership; providing for the council's meetings and business; creating a special fund; requiring the council to designate an executive director; providing for reimbursement of expenses; requiring biannual reports; providing a termination date for the council.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-12. State Advisory Council on Establishing a Military College.

(a) There is created the State Advisory Council on Establishing a Military College. The council's purpose is to study the viability and potential benefits of creating an accredited educational institution offering baccalaureate degrees that is patterned, to the extent practicable, after one or more of the six senior military colleges. The military college is intended to cultivate and produce excellent leaders of good character to serve our state. The council shall study issues related to the council's purpose, including the following:

(1) The social and civic impact of a military college upon this state;

(2) Possible sites at which the military college could be located;

(3) The fiscal impact of a military college upon this state;

(4) Possible sources of funding the establishment and operation of a military college;

(5) The development of a robust Reserve Officers' Training Corps program patterned after the Reserved Officers' Training Corps program at one or more of the six senior military colleges;

(6) Issues relating to potential admission standards, codes of conduct, curricula, and degrees and programs offered; and

(7) Any other issues that the council determines to be reasonably related to the council's purpose.

(b) The State Advisory Council on Establishing a Military College consists of seven voting members, all of whom are knowledgeable about and interested in issues relating to the council's purpose.

(c) Voting members shall be appointed by the Governor, by and with the advice and consent of the Senate. Appointments shall be made not later than 30 days after the effective date of this act. Vacancies shall be filled in the same manner as original appointments.

(d) The following four members shall be considered nonvoting members:

(1) The Adjutant General of the West Virginia National Guard, or his or her designee;

(2) The Secretary of the Department of Commerce, or his or her designee;

(3) The Chancellor of the Higher Education Policy Commission, or his or her designee;

and (4) A representative of a West Virginia, private, not-for-profit higher education institution.

(e) The members of the council shall select the chairperson and vice chairperson, who may not be employees of the state. The council shall hold its first meeting not later than 30 days after the appointment of its members. For purposes of the first meeting, the Adjutant General or his or her designee shall call and preside over the first meeting until a chair is selected. Thereafter, the council shall meet at the call of the chairperson or at least once per quarter.

(f) There is hereby created a special revenue fund in the State Treasury designated the Military College Advisory Council Fund, which consists of any appropriations to the fund, all interest earned from investment of the fund, and any gifts, grants, or contributions received by the fund. Expenditures from the fund shall be for the purposes set forth in this section. The board retains the amount in the special revenue fund from year to year. No compensation or expense incurred under this section is a charge against the General Revenue Fund. The special revenue fund shall expire on June 30, 2028, and all such remaining funds shall transfer to the General Revenue Fund.

(g) Not later than 60 days after its first meeting, the council shall employ an executive director, who serves at the council's will and pleasure. The council shall set the qualifications for and salary of the position of executive director. The council may not select one of its own members to serve as executive director.

(h) The executive director and members of the council are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties. Members are not entitled to compensation for services performed as members.

(i) The council shall report biannually to the Legislative Joint Committee on Government and Finance on the activities of the council. The first report shall be filed on or before the second Wednesday in January, 2026.

(j) The State Advisory Council on Establishing a Military College terminates on June 30, 2028.

CHAPTER 179

**(H. B. 3080 - By Delegates W. Clark, Ridenour, Horst,
Hornby, and Funkhouser)**

[Passed April 10, 2025; in effect 90 days from passage (July 9, 2025)]

[Approved by the Governor on April 29, 2025.]

AN ACT to amend and reenact §16B-17-9 and §16B-17-9a of the Code of West Virginia, 1931, as amended, relating to establishing that an employer granting preference in hiring a military spouse does not violate the state Human Rights Act under certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. HUMAN RIGHTS COMMISSION.

§16B-17-9. Unlawful discriminatory practices.

It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the State of West Virginia or its agencies or political subdivisions:

(1) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions, or privileges of employment if the individual is able and competent to perform the services required even if such individual is blind or disabled: *Provided*, That it shall not be an unlawful discriminatory practice for an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subdivision: *Provided further*, That an employer may grant preference in hiring to a military spouse or to a veteran

or disabled veteran in accordance with the provisions of §16B-17-9a of this code without violating the provisions of this article. For purposes of this subdivision, "military spouse" means the husband or wife of a member of the Armed Forces who, as determined by the United States Secretary of Defense, is performing active duty pursuant to orders that authorize a permanent change of station move, if such husband or wife relocates to the member's new permanent duty station.

(2) For any employer, employment agency, or labor organization, prior to the employment or admission to membership, to: (A) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, sex, or age of any applicant for employment or membership; (B) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specifications, or discrimination based upon race, religion, color, national origin, ancestry, sex, disability, or age; or (C) Deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, sex, age, blindness, or disability;

(3) For any labor organization because of race, religion, color, national origin, ancestry, sex, age, blindness, or disability of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individual with respect to hire, tenure, terms, conditions, or privileges of employment or any other matter, directly or indirectly, related to employment;

(4) For an employer, labor organization, employment agency, or any joint labor-management committee controlling apprentice training programs to:

(A) Select individuals for an apprentice training program registered with the State of West Virginia on any basis other than their qualifications as determined by objective criteria which permit review;

(B) Discriminate against any individual with respect to his or her right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, or other occupational training or retraining program;

(C) Discriminate against any individual in his or her pursuit of such programs or to discriminate against such a person in the terms, conditions, or privileges of such programs;

(D) Print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for these programs or to make any inquiry in connection with a program which expresses, directly or indirectly, discrimination or any intent to discriminate unless based upon a bona fide occupational qualification;

(5) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his or her race, religion, color, national origin, ancestry, sex, age, blindness, or disability;

(6) For any person being the owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodations to:

(A) Refuse, withhold from, or deny to any individual because of his or her race, religion, color, national origin, ancestry, sex, age, blindness, or disability, either directly or indirectly, any of the accommodations, advantages, facilities, privileges, or services of the place of public accommodations;

(B) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, privileges, or services of any such place shall be refused, withheld from, or denied to any individual on account of race, religion, color, national origin, ancestry, sex, age, blindness, or disability, or that the patronage or custom thereof of any individual, belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex, or age, or who

is blind or disabled, is unwelcome, objectionable, not acceptable, undesired, or not solicited; or

(7) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman, or financial institution to:

(A) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass, or cause physical harm or economic loss or to aid, abet, incite, compel, or coerce any person to engage in any of the unlawful discriminatory practices defined in this section;

(B) Willfully obstruct or prevent any person from complying with the provisions of this article, or to resist, prevent, impede, or interfere with the commission or any of its members or representatives in the performance of a duty under this article; or

(C) Engage in any form of reprisal or otherwise discriminate against any person because he or she has opposed any practices or acts forbidden under this article or because he or she has filed a complaint, testified, or assisted in any proceeding under this article.

§16B-17-9a. Veterans and military spouses preference not a violation of equal employment opportunity under certain circumstances.

(a) An employer may grant preference in hiring to a veteran or disabled veteran who has been honorably discharged from the United States Armed Services, or to a military spouse, provided that the person granted the hiring preference meets all of the knowledge, skills, and eligibility requirements of the job to be filled. Such hiring preference may be granted without violating the provisions of this article or any other state equal employment opportunity law.

(b) For purposes of this section:

(1) "Veteran" means any person who has received an honorable discharge and:

(A) Has provided more than 180 consecutive days of full-time, active-duty service in the United States Armed Services or Reserve components thereof, including the National Guard; or

(B) Has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

(2) "Military spouse" means the husband or wife of a member of the Armed Forces who, as determined by the United States Secretary of Defense, is performing active duty pursuant to orders that authorize a permanent change of station move, if such husband or wife relocates to the member's new permanent duty station.

CHAPTER 180

(Com. Sub. for S. B. 883 - By Senator Phillips)

[Passed April 11, 2025; in effect 90 days from passage (July 10, 2025)]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §22A-1-8, §22A-1-9, §22A-1-11, §22A-1-12, §22A-1-13, §22A-4-5, §22A-6-3, and §22A-9-1 of the Code of West Virginia, 1931, as amended, relating to providing the Director of the West Virginia Office of Miners' Health, Safety, and Training discretion and authority in the appointment of surface mine inspectors, mine safety instructors, electrical inspectors, underground mine inspectors, and inspectors; requiring Office of Miners' Health, Safety and Training report certain information to Board of Coal Mine Health and Safety; modifying certain age limit provisions regarding certain mine inspectors; and limiting tenure eligibility for certain mine inspectors.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.

§22A-1-8. Mine inspectors; regions and districts; employment; tenure; oath.

(a) Notwithstanding any other provisions of this code to the contrary, mine inspectors shall be selected, serve, and be removed as provided in this article.

(1) The director shall divide the state into a sufficient number of regions, so as to equalize, as far as practical, the work of each inspector. The director may assign inspectors to districts and may designate and assign not more than one inspector-at-large and one

assistant inspector-at-large to each region. The director may designate the places of abode of inspectors at points convenient to the mines of their respective districts and, in the case of inspectors-at-large and assistant inspectors-at-large, their respective regions.

(2) The director has full discretion and authority in the original appointment of all mine inspectors, including any testing and qualifications necessary for an applicant to be considered for appointment. The director shall report to the Board of Coal Mine Health and Safety:

(A) Any such appointment; and

(B) Information regarding all applications and testing. The board shall have access to all applications and may be present during applicant testing.

Each original appointment shall be made by the director for a probationary period of not more than one year.

(3) The director shall prepare a register of qualified eligible candidates for mine inspector. Candidates shall be selected from the register. In the event the number of qualified eligible candidates on the register is three or fewer, the director shall undertake efforts to develop a new register containing more than three qualified eligible candidates.

(4) The director shall make each appointment from among the three candidates on the register having the highest grades. The director may, for good cause and at least 30 days prior to making an appointment, strike any candidate from the register. The director shall immediately notify the candidate in writing of their removal. Upon his or her written request, the candidate can be placed back upon the register. Such a request may not be unreasonably denied by the director.

(5) The name of any candidate passed over for appointment for three years shall be deleted from the register.

(b) After having served for a probationary period of one year to the satisfaction of the director, a mine inspector is eligible for

permanent tenure, subject to dismissal only for cause in accordance with the applicable provisions of §22A-1-12 of this code. A mine inspector, while in office, may not be directly or indirectly interested as an employee, owner, lessor, operator, stockholder, superintendent, or engineer of any coal mine. Before entering upon the discharge of the duties as a mine inspector, he or she shall take the oath of office prescribed by Section 5, Article IV of the Constitution of West Virginia, a certificate of which oath shall be filed in the office of the Secretary of State.

(c) The inspectors, inspectors-at-large, and assistant inspectors-at-large, together with the director, shall make all inspections authorized by this article and §22A-2-1 *et seq.* of this code and shall perform such other duties as are imposed upon mine inspectors by this chapter and by any applicable legislative rules.

§22A-1-9. Mine safety instructors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to mine safety instructors.

(a) The office shall employ a sufficient number of mine safety instructors as the director determines to be reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

(b) To be eligible for employment as a mine safety instructor, the applicant shall:

(1) Be a citizen of West Virginia, in good health, not less than 24 years of age, of good character and reputation, and of temperate habits;

(2) Have had at least five years of practical experience in coal mines, at least two of which have been in mines in this state: *Provided*, That graduation from any accredited college of mining engineering may be considered equivalent to two years of practical experience;

(3) Have had practical experience with dangerous gases found in coal mines, and have good theoretical and practical knowledge

of mines, mining methods, mine ventilation, sound safety practices, and applicable mining laws and rules; and

(4) Hold a West Virginia foreman-fireboss certification; or have at least three years of experience as an actual working team member of a mine rescue team; or have at least three years of experience as a member of a first aid team or emergency medical technician team; or have had at least three years of experience as the safety director; or have had at least three years of experience as an active member of a mine safety committee.

For the purpose of this section, practical experience means the performance of normal mining duties requiring a person to hold a certificate of competency and qualification as an experienced miner prior to actually performing such duties.

(c) In order to qualify for appointment as a mine safety instructor, an eligible applicant shall submit to written, oral, and practical examinations administered by the director and furnish evidence of good health, character, and other facts establishing eligibility as the director may require. The examinations shall relate to the duties to be performed by a mine safety instructor and are subject to the approval of the director.

(1) The director has full discretion and authority in the original appointment of all mine inspectors, including any testing and qualifications necessary for an applicant to be considered for appointment. The director shall report to the Board of Coal Mine Health and Safety:

(A) Any such appointment; and

(B) Information regarding all applications and testing. The board shall have access to all applications and may be present during applicant testing.

(2) If the director finds after investigation and examination that an applicant: (A) Is eligible for appointment; and (B) has passed each required examination with a grade of at least 75 percent or an overall combined average score of 80 percent, the director shall add the applicant's name and grades to the register of qualified eligible

candidates. The director shall then appoint one of the candidates from the three having the highest grades.

(d) Mine safety instructors shall be paid an annual salary of not less than \$37,400, which shall be fixed by the director, who shall take into consideration ability, performance of duty, and experience. Mine safety instructors shall devote all of their time to the duties of the office.

(e) Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualification, appointment, tenure, and removal of underground mine inspectors, as well as those provisions relating to compensatory time and reimbursement for necessary expenses, are applicable to mine safety instructors.

§22A-1-11. Employment of electrical inspectors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to electrical inspectors.

(a) The office shall employ a sufficient number of electrical inspectors as the director determines to be reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

(b) To be eligible for employment as an electrical inspector, the applicant shall:

(1) Be a citizen of West Virginia, in good health, not less than 24 years of age, of good character and reputation, and of temperate habits; and

(2) Have had five years of practical electrical experience in coal mines, at least two of which were in mines in this state, or a degree in electrical engineering from an accredited electrical engineering school and three years of practical electrical experience in underground coal mining. For the purposes of this section, practical electrical experience means the performance of duties requiring a person to be a certified electrician, as that term is defined in §22A-1-2(d)(2) of this code, prior to actually performing such duties.

(c) (1) In order to qualify for appointment as an electrical inspector, an eligible applicant shall submit to written, oral, and practical examinations administered by the director and furnish evidence of good health, character and other facts establishing eligibility as the director may require. The examinations shall relate to the duties to be performed by an electrical inspector and are subject to approval of the director.

(2) If the director finds after investigation and examination that an applicant: (A) Is eligible for appointment; and (B) has passed the required examinations with an average grade of at least 90 percent, the director shall add the applicant's name and grades to the register of qualified eligible candidates. The director shall then appoint one of the candidates from the three having the highest grades.

(3) The director has full discretion and authority in the original appointment of all mine inspectors, including any testing and qualifications necessary for an applicant to be considered for appointment. The director shall report to the Board of Coal Mine Health and Safety:

(A) Any such appointment; and

(B) Information regarding all applications and testing. The board shall have access to all applications and may be present during applicant testing.

(d) Electrical inspectors shall be paid an annual salary of not less than \$42,828, which shall be fixed by the director, who shall take into consideration ability, performance of duty and experience. Electrical inspectors shall devote all of their time to the duties of the office.

(e) Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualifications, appointment, tenure and removal of underground mine inspectors, as well as those provisions relating to compensatory time and reimbursement for necessary expenses, are applicable to mine electrical inspectors.

§22A-1-12. Employment of underground mine inspectors; eligibility; qualifications; examinations; salary and expenses; reinstatement; removal.

(a) The office shall employ as many underground mine inspectors as the director determines to be reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

(b) To be eligible for employment as a mine inspector the applicant shall:

(1) Be a citizen of West Virginia, in good health, not less than 24 years of age, of good character and reputation, and of temperate habits;

(2) Have had at least five years of practical experience in coal mines, at least two of which have been in mines of this state: *Provided*, That graduation from any accredited college of mining engineering may be considered the equivalent of two years of practical experience;

(3) Have had practical experience with dangerous gases found in coal mines; and

(4) Have good theoretical and practical knowledge of mines, mining methods, mine ventilation, sound safety practices, and applicable mining laws and rules. For the purpose of this section, practical experience means the performance of normal mining duties requiring a person to hold a certificate of competency and qualification as an experienced underground miner prior to actually performing such duties.

(c) In order to qualify for appointment as an underground mine inspector, an eligible applicant shall submit to written, oral, and practical examinations administered by the director and furnish evidence of good health, character, and other facts establishing eligibility as the director may require. The examinations shall relate to the duties to be performed by an underground mine inspector and are subject to the approval of the director. If the director finds after investigation and examination that an applicant: (1) Is eligible

for appointment; and (2) has passed each required examination, with a grade of at least 75 percent or an overall combined average score of 80 percent, the director shall add the applicant's name and grades to the register of qualified eligible candidates. The director shall then appoint one of the candidates from the three having the highest grades.

(d) The director has full discretion and authority in the original appointment of all mine inspectors, including any testing and qualifications necessary for an applicant to be considered for appointment. The director shall report to the Board of Coal Mine Health and Safety:

(1) Any such appointment; and

(2) Information regarding all applications and testing. The board shall have access to all applications and may be present during applicant testing.

(e) Underground mine inspectors shall be paid an annual salary of not less than \$38,160; assistant inspectors-at-large, not less than \$44,448; and inspectors-at-large, not less than \$46,104, each of which shall be fixed by the director, who shall take into consideration ability, performance of duty, and experience. In accordance with established rules of the state's Travel Management Office, underground mine inspectors shall also be allowed and paid expenses necessarily incident to the performance of their official duties. Reimbursement for expenses may be made only upon the timely submission of a properly itemized expense account settlement completed by the underground mine inspector, approved and countersigned by the director, or his or her designee, verifying that the expenses were actually incurred in the performance of official duties. Underground mine inspectors shall devote all of their time to the duties of the office and shall be afforded compensatory time or compensation of at least the regular rate for all time in excess of 40 hours per week.

(f) (1) An underground mine inspector, after receiving a permanent appointment, may be removed from office only for physical or mental impairment, incompetency, neglect of duty,

public intoxication, malfeasance in office, or other similarly good cause.

(2) The director may remove an underground mine inspector at any time for the reasons set forth in §22A-1-12(e)(1) of this code. Upon such removal, the inspector shall be provided a written notice of removal, describing any causes for removal and setting forth with particularity the facts on which the removal was based. Not less than 20 reputable citizens, who are operators or employees in mines in this state, may petition the director for the removal of an underground mine inspector. If the petition is verified by at least one of the petitioners, based on actual knowledge of the affiant of the alleged facts, which, if true, warrant the removal of the inspector, the director shall cause an investigation of the alleged facts to be made. If, after the investigation, the director finds that there is substantial evidence that warrants removal of the inspector, the director shall remove the inspector and provide him or her a written notice of removal, describing any causes for removal and setting forth with particularity the evidence found in the investigation. In all cases of removal, the inspector may request, in writing, a hearing before the Board of Coal Mine Health and Safety within 15 days of receipt of the notice of removal. The director shall provide the inspector written notice of the right to a hearing in the notice of removal.

(3) If the inspector requests a hearing in writing, the board shall promptly schedule a hearing and provide notice to the inspector of the time and place for such hearing, at which time and place the board shall hear all evidence offered in support of the removal and on behalf of the inspector. Each witness shall be sworn, and a transcript shall be made of all evidence taken and proceedings had at the hearing. A continuance may not be granted except for good cause shown. The administrator of the board, or in their absence a member of the board designated by the board, has the power to administer oaths and subpoena witnesses.

(4) If any removed mine inspector requests a hearing and thereafter willfully refuses or fails to appear before the board, or having appeared, refuses to answer under oath any relevant question on the basis that the testimony or answer might

incriminate him or her or refuses to waive immunity from prosecution because of any relevant matter about which the inspector may be asked to testify, then the inspector shall forfeit his or her position.

(5) If the inspector fails to request a hearing in writing, or after requesting a hearing in writing and such hearing having been held, the board finds that the inspector should be removed based on a preponderance of the evidence, the board shall enter an order to that effect. Should the board find that the inspector should not have been removed, the inspector shall be reinstated. The decision of the board is final and is not subject to judicial review.

§22A-1-13. Employment of surface mine inspectors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to surface mine inspectors.

(a) The office shall employ as many surface mine inspectors as the director determines to be reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

(b) To be eligible for employment as a surface mine inspector the applicant shall:

(1) Be a citizen of West Virginia, in good health, not less than 24 years of age, of good character and reputation and of temperate habits;

(2) Have had at least five years of practical experience in coal mines, at least two of which have been on surface mines in this state: *Provided*, That graduation from any accredited college of mining engineering may be considered the equivalent of two years of practical experience; and

(3) Have good theoretical and practical knowledge of surface mines, surface mining methods, sound safety practices, and applicable mining laws and rules. For the purpose of this section, practical experience means the performance of normal mining duties requiring a person to hold a certificate of competency and

qualification as an experienced surface miner prior to actually performing the duties.

(c) In order to qualify for appointment as a surface mine inspector, an eligible applicant shall submit to written, oral, and practical examinations administered by the director and furnish evidence of good health, character and other facts establishing eligibility as the director may require. The examinations shall relate to the duties to be performed by a surface mine inspector and are subject to the approval of the director.

(1) If the director finds after investigation and examination that an applicant:: (A) Is eligible for appointment; and (B) has passed each required examination with a grade of at least 75 percent, or an overall combined average score of 80 percent, the director shall add the applicant's name and grades to the register of qualified eligible candidates. The director shall then appoint one of the candidates from the three having the highest grades.

(2) The director has full discretion and authority in the original appointment of all mine inspectors, including any testing and qualifications necessary for an applicant to be considered for appointment. The director shall report to the Board of Coal Mine Health and Safety:

(A) Any such appointment; and

(B) Information regarding all applications and testing. The board shall have access to all applications and may be present during applicant testing.

(d) Surface mine inspectors shall be paid an annual salary of not less than \$37,332, which shall be fixed by the director, who shall take into consideration ability, performance of duty, and experience. Surface mine inspectors shall devote all of their time to the duties of the office.

(e) Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualification, appointment, tenure, and removal of underground mine inspectors, as well as those provisions relating to compensatory time and

reimbursement for necessary expenses, are applicable to surface mine inspectors.

§22A-4-5. Inspectors.

(a) The Director of the Office of Miners' Health, Safety and Training shall divide the state into not more than two mining districts and assign one inspector to each district. Such inspector shall be a citizen of West Virginia, in good health, of good character and reputation, temperate in habits, and have a minimum of five years of practical experience in such mining operations. To qualify for appointment as such an inspector, an eligible applicant shall submit to a written and oral examination by the director and furnish such evidence of good health, character, and other facts establishing eligibility as the director may require. If the director finds after investigation and examination that an applicant: (1) Is eligible for appointment; and (2) has passed all written and oral examinations, with a grade of at least 90 percent, the director shall add such applicant's name and grade to the register of qualified eligible candidates. A candidate's name may not remain in the register for more than three years without requalifying.

(b) The director has full discretion and authority in the original appointment of all mine inspectors, including any testing and qualifications necessary for an applicant to be considered for appointment. The director shall report to the Board of Coal Mine Health and Safety:

(1) Any such appointment; and

(2) Information regarding all applications and testing. The board shall have access to all applications and may be present during applicant testing.

(c) Any inspector appointed under this article shall have the same tenure accorded a mine inspector, as provided in §22A-1-12(e) of this code, and shall be paid not less than \$15,000 per year. Such inspector shall also receive reimbursement for traveling expenses at the rate of not less than 15 cents for each mile actually traveled in the discharge of their duties in a privately owned

vehicle. Such inspector shall also be reimbursed for any expense incurred in maintaining an office in his or her home, which office is used in the discharge of official duties: *Provided*, That such reimbursement may not exceed \$240 per annum.

§22A-6-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.

(a) The Board of Coal Mine Health and Safety is continued, and commencing July 1, 2010, is a separate independent board within the Department of Commerce. The board consists of six voting members and one ex officio, nonvoting member who are residents of this state, and who are appointed as follows:

(1) The Governor shall appoint, by and with the advice and consent of the Senate, three members to represent the viewpoint of those operators in this state. When such members are to be appointed, the Governor shall request from the major trade association representing operators in this state a list of three nominees for each such position on the board. All such nominees shall be persons with special experience and competence in health and safety. There shall be submitted with such list a summary of the qualifications of each nominee. If the full lists of nominees are submitted in accordance with the provisions of this subdivision, the Governor shall make the appointments from the persons so nominated. For purposes of this subdivision, the major trade association representing operators in this state is that association which represents operators accounting for over one half of the coal produced in mines in this state in the year prior to the year in which the appointment is to be made.

(2) The Governor shall appoint, by and with the advice and consent of the Senate, three members who can reasonably be expected to represent the viewpoint of the working miners of this state. When members are to be appointed, the Governor shall request from the major employee organization representing coal miners within this state a list of three nominees for each position on the board. The highest ranking official within the major employee organization representing coal miners within this state

shall submit a list of three nominees for each such position on the board. The nominees shall have a background in health and safety. The Governor shall make the appointments from the requested list of nominees.

(3) All appointments made by the Governor under the provisions of subdivisions (1) and (2) of this subsection shall be with the advice and consent of the Senate; and

(4) The Director of the Office of Miners' Health, Safety and Training or his or her designee serves as an ex officio, nonvoting member.

(b) Members serving on the board on January 1, 2017, shall continue to serve for a minimum of three years until June 30, 2020. The term is three years. Members are eligible for reappointment.

(c) Commencing on July 1, 2017, the board shall assume all powers and responsibilities of the Board of Miners' Training, Education and Certification established pursuant to §22A-7-1 *et seq.* of this code and the Mine Safety Technology Task Force established pursuant to §22A-11-1 *et seq.* of this code.

(d) The Governor shall appoint, subject to the approval of a majority of the members of the board appointed under subdivisions (1) and (2), subsection (a) of this section, a Health and Safety Administrator in accordance with the provisions of §22A-6-6 of this code, who shall certify all official records of the board. The Health and Safety Administrator shall be a full-time officer of the Board of Coal Mine Health and Safety with the duties provided for in §22A-6-6 of this code. The Health and Safety Administrator shall have such education and experience as the Governor deems necessary to properly investigate areas of concern to the board in the development of rules governing mine health and safety. The Governor shall appoint as Health and Safety Administrator a person who has an independent and impartial viewpoint on issues involving mine safety. The Health and Safety Administrator shall be a person who has not been during the two years immediately preceding appointment, and is not during his or her term, an officer, trustee, director, substantial shareholder, contractor, consultant, or

employee of any coal operator, or an employee or officer of an employee organization or a spouse of any such person. The Health and Safety Administrator shall have the expertise to draft proposed rules and shall prepare such rules as are required by this code and on such other areas as will improve coal mine health and safety.

(e) The board shall meet at least once during each calendar month, or more often as may be necessary, and at other times upon the call of the chair, or upon the request of any three members of the board. Under the direction of the board, the Health and Safety Administrator shall prepare an agenda for each board meeting giving priority to the promulgation of rules as may be required, from time to time, by this code, and as may be required to improve coal mine health and safety. The Health and Safety Administrator shall provide each member of the board with notice of the meeting and the agenda as far in advance of the meeting as practical, but in any event, at least five days prior thereto. A meeting of the board may not be conducted unless said notice and agenda are given to the board members at least five days in advance, as provided herein, except in cases of emergency, as declared by the director, in which event members shall be notified of the board meeting and the agenda: *Provided*, That upon agreement of a majority of the quorum present, any scheduled meeting may be ordered recessed to another day certain without further notice of additional agenda.

When proposed rules are to be finally adopted by the board, copies of such proposed rules shall be delivered to members not less than five days before the meeting at which such action is to be taken. If not so delivered, any final adoption or rejection of rules shall be considered on the second day of a meeting of the board held on two consecutive days, except that by the concurrence of at least four members of the board, the board may suspend this rule of procedure and proceed immediately to the consideration of final adoption or rejection of rules. When a member fails to appear at three consecutive meetings of the board or at one half of the meetings held during a one-year period, the Health and Safety Administrator shall notify the member and the Governor of such fact. Such member shall be removed by the Governor unless good cause for absences is shown.

(f) Whenever a vacancy on the board occurs, nominations and appointments shall be made in the manner prescribed in this section. In the case of an appointment to fill a vacancy, nominations of three persons for each such vacancy shall be requested by and submitted to the Governor within 30 days after the vacancy occurs by the major trade association or major employee organization, if any, which nominated the person whose seat on the board is vacant. The vacancy shall be filled by the Governor within 30 days of his or her receipt of the list of nominations.

(g) A quorum of the board is four members which shall include at least two members representing the viewpoint of operators and at least two members representing the viewpoint of the working miners, and the board may act officially by a majority of those members who are present, except that a vote of the board may not be taken unless all six voting members are present.

§22A-9-1. Mine Inspectors' Examining Board duties imposed upon the Office of Miners' Health, Safety and Training.

The Mine Inspectors' Examining Board is hereby abolished, and all powers, duties, and responsibilities previously imposed upon the Board of Coal Mine Health and Safety pursuant to this article are transferred to the Office of Miners' Health, Safety, and Training. The Board of Coal Mine Health and Safety, having previously assumed the duties of the Mine Inspectors' Examining Board, shall transfer all records and equipment pertaining to the duties of and said transfer of the Mine Inspectors' Examining Board to the Office of Miners' Health, Safety, and Training. In addition to other duties expressly set forth elsewhere in this article, the Director of the Office of Miners' Health, Safety, and Training shall:

(1) Establish and, from time to time, revise forms of application for employment as mine inspectors, which shall include the applicant's Social Security number and forms for written examinations to test the qualifications of candidates for that position;

(2) Adopt and promulgate reasonable rules relating to the examination, qualification, and certification of candidates for appointment as mine inspectors, and hearing for removal of inspectors, held under §22A-1-12 of this code. All of such rules shall be printed and a copy thereof furnished by the director to any person upon request. The director shall determine whether applicants have the necessary experience to take the mine inspector examination, conduct examination of candidates for appointment as a mine inspector, and rank all applicants;

(3) Prepare a register of qualified eligible candidates for appointment as mine inspectors. The register shall list all qualified eligible candidates in the order of their grades, with the candidate with the highest grade appearing at the top of the list. The Director of the Office of Miners' Health, Safety, and Training shall no less than annually prepare a revised and corrected register of qualified eligible candidates for appointment as mine inspector, deleting from such revised register all persons who:

(A) Are no longer residents of West Virginia;

(B) Have allowed a calendar year to expire without, in writing, indicating their continued availability for such appointment;

(C) Have been passed over for appointment for three years;

(D) Have become ineligible for appointment since the director originally certified that such person was qualified and eligible for appointment as mine inspector; or

(E) In the judgment of the director, should be removed from the register for good cause;

(4) The director shall keep and preserve the written examination papers, manuscripts, grading sheets, and other papers of all applicants for appointment as mine inspector for a period of two years. Specimens of the examinations given, together with the correct solution of each question, shall be preserved;

(5) The director shall issue a letter or written notice of qualification to each successful eligible candidate;

(6) The Board of Coal Mine Health and Safety shall hear and determine proceedings for hearings for the removal of mine inspectors in accordance with the provisions of §22A-1-12 of this code when requested in writing by the mine inspector;

(7) The board shall hear and determine appeals of mine inspectors from suspension orders made by the director pursuant to the provisions of §22A-1-4 of this code. An aggrieved inspector, in order to appeal from any order of suspension, shall file such appeal in writing with the Board of Coal Mine Health and Safety not later than 10 days after receipt of notice of suspension. On such appeal the board shall promptly affirm the act of the director unless it is satisfied from a clear preponderance of the evidence that the director has acted arbitrarily. Each witness shall be sworn, and a transcript shall be made, of all evidence taken and the proceedings had at the hearing. A continuance may not be granted except for good cause shown. The administrator of the board, or in their absence a member of the board designated by the board, has the power to administer oaths and subpoena witnesses; and

(8) The board and office shall make an annual report to the Governor and the director concerning the administration of mine inspection personnel in the state service, making such recommendations as the board considers to be in the public interest.

CHAPTER 181

(H. B. 2402 - By Delegates Burkhammer, Mazzocchi, Worrell, Hite, Miller, Petitto, Horst, and Kimble)

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §16-29-1 of the Code of West Virginia, 1931, as amended; and to amend the code by adding a new section, designated §16-29-3, relating to providing access to medical records; providing access to a summary of medical records; providing access to a minor's medical records; removing exemptions for records governed by the AIDS related Medical Testing and Records Confidentiality Act; and providing exemptions for access to a minor's medical records.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 29. HEALTH CARE RECORDS.

§16-29-1. Copies of health care records to be furnished to patients.

(a) A health care provider so licensed, certified or registered under the laws of this state shall, upon the written request of a patient, his or her personal representative, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and any rules promulgated pursuant to the act, and his or her authorized agent or authorized representative, within no more than thirty days from the receipt of the request, furnish a copy, in the form of a paper copy or, if requested and if the provider routinely stores records electronically and has the ability to so

provide, a copy in an electronic format including, but not limited to, a downloadable format through a secure web portal, a copy saved upon a computer disc, an electronically mailed copy or a copy saved upon a portable memory device of all or a portion of the patient's record to the patient, his or her personal representative, or authorized agent or authorized representative subject to the following exceptions:

(1) In the case of a patient receiving treatment, a summary of the record shall be made available to the patient, personal representative, or his or her authorized agent or authorized representative following termination of the treatment.

(2) The furnishing of a copy, as requested, of the reports of x-ray examinations, electrocardiograms and other diagnostic procedures shall be deemed to comply with the provisions of this article.

(b) This article does not apply to records subpoenaed or otherwise requested through court process, except for the fee provisions in §16-29-2 of this code, which do apply to subpoenaed records.

(c) The provisions of this article may be enforced by a patient, personal representative, authorized agent or authorized representative. A health care provider found to be in violation of this article shall pay any attorney fees and costs, including court costs incurred in the course of such enforcement.

§16-29-3. Access to minor's records.

(a) A parent, guardian, foster parent or kinship placement may not be denied access to the health records of their minor child unless otherwise ordered by a court or pursuant to subsection (b) of this section.

(b) A parent is not permitted to access the health records of that parent's minor child if:

(1) The minor child has graduated high school or equivalent;

(2) The minor child is emancipated; or

(3) The minor child is married.

(c) Except as provided in subsection (b) of this section, no release, authorization, nor any form of permission from or by the minor child shall be required or requested as a prerequisite for the parent or legal guardian to obtain the medical records.

CHAPTER 182

**(S. B. 942 - By Senators Rose, Queen, Azinger, Charnock,
Fuller, Hart, Helton, Jeffries, Phillips, and Taylor)**

[Passed April 12, 2025; in effect from passage]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §22A-2A-101 of the Code of West Virginia, 1931, as amended; relating to modifying the requirements for the use and movement of diesel-powered equipment used in mines.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. USE OF DIESEL-POWERED EQUIPMENT IN UNDERGROUND COAL MINES.

§22A-2A-101. Use of diesel-powered equipment authorized.

Diesel-powered equipment for use in underground coal mines may only be approved, operated, and maintained in accordance with rules, requirements, and standards established pursuant to this article: *Provided*, That diesel-powered equipment may be moved from one mine, either in or out of the state, to another mine in the state and operated immediately, so long as the equipment is in compliance with the provisions of this article and the director is notified before the equipment is put in service.

CHAPTER 183

(Com. Sub. for S. B. 267 - By Senator Maynard)

[Passed April 4, 2025; in effect 90 days from passage (July 3, 2025)]

[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §17E-1-12 of the Code of West Virginia, 1931, as amended, relating to extending the time for renewal and restoration of expired or downgraded commercial driver's licenses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-12. Classifications, endorsements, and restrictions.

(a) Commercial driver's licenses may be issued with the following classifications:

(1) *Class A combination vehicle.* — Any combination of vehicles with a gross combined vehicle weight rating of 26,001 pounds or more, provided the gross vehicle weight rating of the vehicle being towed is in excess of 10,000 pounds.

(2) *Class B heavy straight vehicle.* — Any single vehicle with a gross vehicle weight rating of 26,001 pounds or more and any vehicle towing a vehicle not in excess of 10,000 pounds.

(3) *Class C small vehicle.* — Any single vehicle or combination vehicle that does not fall under either Class A or Class B but are:

(A) Vehicles designed to transport 16 or more passengers, including the driver; and

(B) Vehicles used in the transportation of hazardous materials which requires the vehicle to be placarded under 49 C.F.R. Part § 172, Subpart F (2004).

(4) Each applicant who desires to operate a vehicle in a classification different from the class in which the applicant is authorized is required to retake and pass all related tests except the following:

(A) A driver who has passed the knowledge and skills test for a combination vehicle in Class A may operate a heavy straight vehicle in Class B or a small vehicle in Class C provided he or she possesses the required endorsements; and

(B) A driver who has passed the knowledge and skills test for a vehicle in Class B may operate any small vehicle in Class C provided he or she possesses the required endorsements.

(b) *Endorsements and restrictions.* — The commissioner upon issuing a commercial driver's license may impose endorsements and restrictions determined by the commissioner to be appropriate to assure the safe operation of a specific class, type, or category of motor vehicle or a specifically equipped motor vehicle and to comply with 49 U.S.C., *et seq.*, and 49 C.F.R. § 383.93 (2004) including, but not limited to, endorsements or restrictions to operate:

(1) Double or triple trailers which requires successful completion of a knowledge test;

(2) Passenger vehicles which requires successful completion of a knowledge and skills test;

(3) Tank vehicles which requires successful completion of a knowledge test;

(4) Vehicles used for the transportation of hazardous materials as defined in section three of this article which requires the completion of a knowledge test and a background security risk check in accordance with 49 C.F.R. § 1572.5 (2004);

(5) School buses which requires successful completion of a knowledge and skills test unless the applicant meets the criteria for waiver of the skills test in accordance with 49 C.F.R. § 383.123(b) (2004); or

(6) Vehicles equipped with air brakes which requires the completion of a skills test.

(c) *Applicant record check.* — Before issuing a commercial driver's license, the commissioner shall obtain driving record and medical certification status information through the commercial driver's license information system, the national driver register, and from each state in which the person has been licensed.

(d) *Notification of license issuance.* — Within 10 days after issuing a commercial driver's license, the commissioner shall notify the commercial driver's license information system of the issuance and provide all information required to ensure identification of the person.

(e) *Expiration of license.* —

(1) Every commercial driver's license issued to persons who have attained their 21st birthday expires on the applicant's birthday in those years in which the applicant's age is evenly divisible by five. Except as provided in subdivision (2) of this subsection, no commercial driver's license may be issued for less than three years nor more than seven years. The commercial driver's license shall be renewed by the applicant's birthday and is valid for a period of five years, expiring on the applicant's birthday and in a year in which the applicant's age is evenly divisible by five. No commercial driver's license with a hazardous materials endorsement may be issued for more than five years.

(2) Every commercial driver's license issued to persons who have not attained their 21st birthday expires 30 days after the applicant's birthday in the year in which the applicant attains the age of 21 years.

(3) Commercial driver's licenses held by any person in the armed forces which expire while that person is on active duty

remains valid for 30 days from the date on which that person reestablishes residence in West Virginia.

(4) Any person applying to renew a commercial driver's license which has been expired for three years or more shall follow the procedures for an initial issuance of a commercial driver's license, including the testing provisions: *Provided*, That a person whose commercial driver's license has been downgraded solely as a result of his or her medical certification becoming expired or invalid may also have his or her commercial driver's license restored upon presentation of a valid and current medical certification no more than five years after such downgrade without being required to follow the procedures for an initial issuance of a commercial driver's license, including the testing provisions.

(5) Any commercial driver's license held by a person who does not possess a valid or current medical certification status is no longer valid for the operation of a commercial motor vehicle and is downgraded to the appropriate licensure level commensurate with the licensee's qualifications regardless of the expiration date or indicated class on the face of the license within the time frames prescribed by 49 C.F.R. § 383.73(j).

(f) When applying for renewal of a commercial driver's license, the applicant shall complete the application form and provide updated information and required certifications.

(g) If the applicant wishes to obtain or retain a hazardous materials endorsement, the applicant shall comply with a background check in accordance with 49 U.S.C. § 5103a and 49 C.F.R. Part § 1572 (2004) and subject to the following:

(1) The applicant is a citizen of the United States or a lawful permanent resident of the United States;

(2) The applicant completes the application prescribed by the division and submits fingerprints in a form and manner prescribed by the division and the United States Department of Homeland Security Transportation Security Administration at the time of

application or at any other time in accordance with 49 C.F.R. § 1572.5 (2004);

(3) The applicant pays all fees prescribed by the Transportation Security Administration or its agent and the division;

(4) The applicant has not been adjudicated as a mental defective or committed to a mental institution as prescribed in 49 C.F.R. § 1572.109 (2004);

(5) The applicant has not committed a disqualifying criminal offense as described in 49 C.F.R. § 1572.103 (2004);

(6) The applicant has passed the Transportation Security Administration security threat assessment and the division has received a final notification of threat assessment or notification of no security threat from the Transportation Security Administration. An appeal of a decision, determination or ruling of the Federal Bureau of Investigation or the Transportation Security Agency shall be directed to that agency; and

(7) The applicant has successfully passed the written test for the issuance or renewal of a hazardous material endorsement.

CHAPTER 184

(Com. Sub. for H. B. 2157 - By Delegate Burkhammer)

[Passed April 7, 2025; in effect 90 days from passage (July 6, 2025)]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §17A-7-2 of the Code of West Virginia, 1931, as amended, relating to one-movement stickers for vehicles; requiring the Commissioner of the Division of Motor Vehicles to make one-movement stickers available for purchase online; deleting obsolete language; doubling time period during which stickers are valid for one-time movement; prohibiting use of one-movement sticker as evidence of ownership of a vehicle; and authorizing commissioner to prescribe form of sticker.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. SPECIAL STICKERS.

§17A-7-2. Operation of motor vehicles by dealers or other persons under special stickers; application and fees.

(a) A member of the West Virginia State Police may at any detachment office, upon application therefor on a form prescribed by the commissioner, issue to a licensed dealer or any other person other than those specified in §17A-7-1 of this code, a paper sticker to be affixed to the left side of the rear window of a motor vehicle or to the left rear of a vehicle which is not self-propelled. Such sticker shall be of a size to be designated by the commissioner and shall be serially numbered and shall indicate the date of issuance thereof.

(b) A fee of \$10 per sticker shall be collected. The Division of Motor Vehicles may adjust the fee for each sticker every five years

on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in such fee may not exceed 10 percent of the total fee amount in a single year. The fees will be dispersed as follows: Half shall be deposited in the State Road Fund and half shall be deposited in the special revenue account within the Division of Highways for the maintenance of the West Virginia welcome centers and rest areas along interstate highways in this state.

(c) The one-movement sticker authorized by this section is valid for 96 hours after its issuance for the operation of a vehicle, whether under its own power or while being towed, one time only over the streets or highways, and upon being once affixed to a vehicle or used for the one-time movement shall become invalid for subsequent use on that or any other vehicle.

(d) Any sticker issued pursuant to this section may be in the form of a sticker, decal, or other form prescribed by the commissioner.

(e) The commissioner shall make one-movement stickers authorized by this section available for purchase online subject to the same requirements and fee set forth in this section: *Provided*, That the fee may be remitted to the division electronically and the sticker may be provided by the division in an electronic format.

(f) A one-movement sticker issued pursuant to this article may not be used as evidence of ownership of a vehicle.

CHAPTER 185

(Com. Sub. for H. B. 2752 - By Delegates Crouse, Drennan, Dean, Horst, White, Brooks, Phillips, Clay, D. Cannon, and Hott)

[Passed April 10, 2025; in effect 90 days from passage (July 9, 2025)]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §17C-15-44 of the Code of West Virginia, 1931, as amended, relating to allowing a person to operate a motorcycle, motor-driven cycle, or moped while standing astride the vehicle and facing forward.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. EQUIPMENT.

§17C-15-44. Safety equipment and requirements for motorcyclists, motorcycles, motor-driven cycles and mopeds; motorcycle safety standards and education committee.

(a) A person may not operate or be a passenger on any motorcycle or motor-driven cycle unless the person is wearing securely fastened on his or her head by either a neck or chin strap a protective helmet designed to deflect blows, resist penetration, and spread impact forces. Any helmet worn by an operator or passenger shall meet the current performance specifications established by the American National Standards Institute Standard, Z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard No. 218, or Snell Safety Standards for Protective Headgear for Vehicle Users.

(b) A person may not operate or be a passenger on any motorcycle or motor-driven cycle unless the person is wearing

safety, shatter-resistant eyeglasses, excluding contact lenses, or eye goggles or face shield that complies with the performance specifications established by the American National Standards Institute for Head, Eye and Respiratory Protection, Z 2.1. In addition, if any motorcycle, motor-driven cycle or moped is equipped with a windshield or windscreen, the windshield or windscreen shall be constructed of safety, shatter-resistant material that complies with the performance specifications established by Department of Transportation Federal Motor Vehicle Safety Standard No. 205 and American National Standards Institute, Safety Glazing Materials for Glazing Motor Vehicles Operated on Land Highways, Standard Z 26.1.

(c) A person may not operate a motorcycle, motor-driven cycle or moped on which the handlebars or grips are more than 15 inches higher than the uppermost part of the operator's seat when the seat is not depressed in any manner.

(d) A person operating a motorcycle, motor-driven cycle, or moped shall face forward and either sit astride a permanent operator's seat attached to the vehicle or stand astride the vehicle with both feet on the vehicle's footpegs or pedals. An operator may not carry any other person and any other person may not ride on the vehicle unless the vehicle is designed to carry more than one person, in which case a passenger may ride: (i) behind the operator upon the permanent operator's seat if it is designed for two persons; (ii) upon another seat firmly attached to the vehicle to the rear of the operator's seat and equipped with footrests designed and located for use by the passenger; or (iii) in a sidecar firmly attached to the vehicle. A person may not ride side saddle on a seat. An operator may carry as many passengers as there are seats and footrests to accommodate those passengers. Additional passengers may be carried in a factory-produced sidecar so long as there is one passenger per seat. Any passenger riding in a sidecar shall be restrained by a safety belt.

(e) Every motorcycle, motor-driven cycle, and moped shall be equipped with a rearview mirror affixed to the handlebars or fairings and adjusted so that the operator has a clear view of the

road and condition of traffic behind him or her for a distance of at least two hundred feet.

(f) Notwithstanding any provision of this code to the contrary, a person with a valid driver's license who is operating a fully enclosed autocycle, as defined in §17C-1-69 of this code, is exempt from the provisions of this section.

CHAPTER 186

(Com. Sub. for H. B. 2866 - By Delegate Burkhammer)

[Passed April 10, 2025; in effect 90 days from passage (July 9, 2025)]
[Approved by the Governor on April 28, 2025.]

AN ACT to amend and reenact §8-13-13 of the Code of West Virginia, 1931, as amended, relating to fees and charges for municipality-provided fire services; providing that no municipality may impose any new fire protection service fee, effective on or after June 30, 2024, on person or business located in a county that has imposed a fire service fee without an intergovernmental agreement in place between municipality and county commission; establishing required contents of agreement; establishing length of agreement and providing for renewal; and providing exception for increasing existing fees.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-13. Special charges for municipal services.

(a) Notwithstanding any charter provisions to the contrary, a municipality which furnishes any essential or special municipal service, including, but not limited to, police and fire protection, parking facilities on the streets or otherwise, parks and recreational facilities, street cleaning, street lighting, street maintenance and improvement, sewerage and sewage disposal, and the collection and disposal of garbage, refuse, waste, ashes, trash, and any other similar matter, has plenary power and authority, subject to the limitations set forth in subsection (b) of this section, to provide by ordinance for the installation, continuance, maintenance, or

improvement of the service, to make reasonable regulations of the service, and to impose by ordinance upon the users of the service reasonable rates, fees, and charges to be collected in the manner specified in the ordinance.

(b)(1) No new fire protection fee or charge, effective on or after June 30, 2024, may be imposed pursuant to this section on a person or business situated outside of the municipality's boundaries in a county that has imposed a county fire service fee pursuant to §7-17-12 of this code unless the municipality has entered into an intergovernmental agreement, which complies with the limitations set forth in subdivision (2) of this subsection, with the county commission having jurisdiction over any such person or business.

(2) The intergovernmental agreement referenced in subdivision (1) of this subsection must include, but is not limited to, the following terms:

(A) The municipality's fire protection fees and charges shall be limited to those persons and businesses located within first due areas covered by fire protection services sourced out of the municipality; and

(B) The municipality's fire protection fees and charges shall be the same for all persons and businesses located within and outside of the municipality's boundaries; and

(C) Under no circumstances may any person or business be required to pay both a municipal fire protection fee or charge pursuant to this section and a county fire service fee pursuant to §7-17-12 of this code, except for the pro-rata reconciliation during the first year after passage as set forth in paragraph (D) of this subdivision; and

(D) If any persons and businesses located within first due areas have paid their county fire service fee during the first year after the effective date of the amendments to this section enacted during the 2025 Regular Legislative Session, then (i) any municipality's fire protection fees and charges imposed by the municipality shall be limited to the difference, if any, between the county's fire service

fee and the municipality's fire protection fees and charges within its municipal boundaries; and (ii) the county shall transfer its fire service fee revenues received from all persons and businesses located within first due areas that are covered by the intergovernmental agreement to the municipality; and

(E) After the first year following the effective date of the amendments to this section enacted during the 2025 Regular Legislative Session, persons and businesses located within first due areas covered by the intergovernmental agreement between the county commission and the municipality shall be subject only to the same municipal fire protection fees and charges which the municipality charges all other residents and businesses within its municipal boundaries.

(F) The intergovernmental agreement shall expire five years after the agreement becomes effective. The agreement may be renewed for successive additional terms of no more than five years each.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, any municipality may increase or decrease, in accordance with this section, a fire protection fee or charge that was in effect prior to June 30, 2024, so long as such increase or decrease is uniform for all persons and businesses that are subject to the municipality's fire protection fees and charges, whether by residency within municipal boundaries or by being subject controlling intergovernmental agreement.

(c) Any sewerage and sewage disposal service and any service incident to the collection and disposal of garbage, refuse, waste, ashes, trash, and any other similar matter is subject to the provisions of Chapter 24 of this code.

(d) A municipality may not have a lien on any property as security for payments due under subsection (a) of this section except as provided in subsection (e) of this section.

(e) A municipality may enact an ordinance, pursuant to this section, permitting it to file a lien on real property located within

the municipal corporate limits for unpaid and delinquent fire, police, or street fees. The ordinance shall provide an administrative procedure for the municipality's assessment and collection of the fees. The administrative procedure shall require that, before any lien is filed, the municipality will give notice to the property owner, by certified mail, return receipt requested, that the municipality will file the lien unless the delinquency is paid by a date stated in the notice, which shall be no less than 90 days from the date the notice is mailed. The administrative procedure shall include the right to appeal to the circuit court of the county in which the real property is located. The circuit court shall consider the appeal under its general authority, including but not limited to §51-2-2(f) of this code.

(f) Notwithstanding the provisions of §8-11-4 of this code, any ordinance enacted or substantially amended under the provisions of this section shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code. The publication area for the publication is the municipality.

(g) If 30 percent of the qualified voters of the municipality, by petition duly signed by them in their own handwriting and filed with the recorder of the municipality within 45 days after the expiration of the publication, protest against the ordinance as enacted or amended, the ordinance may not become effective until it is ratified by a majority of the legal votes cast by the qualified voters of the municipality at a regular municipal election or special municipal election, as the governing body directs. Voting may not take place until after notice of the submission is given by publication as provided in subsection (f) of this section.

(h) The powers and authority granted to municipalities and to the governing bodies of municipalities in this section are in addition and supplemental to the powers and authority named in any charters of the municipalities.

(i) Notwithstanding any other provisions of this section, if rates, fees, and charges provided in this section are imposed by the governing body of a municipality for the purpose of replacing, and in amounts approximately sufficient to replace in its general fund

amounts appropriated to be paid from ad valorem taxes upon property within the municipality, pursuant to an election duly called and held under the Constitution and laws of the state to authorize the issuance and sale of the municipality's general obligation bonds for public improvement purposes, the call for the election shall state that the governing body of the municipality proposes to impose rates, fees, and charges in specified amounts under this section for the use of one or more of the services specified in subsection (a) of this section, which shall be related to the public improvement proposed to be made with the proceeds of the bonds, no notice, publication of notice, or referendum, or election or other condition or prerequisite to the imposition of the rates, fees, and charges shall be required or necessary other than the legal requirements for issuance and sale of the general obligation bonds.

(j) Payments for rates, fees, and charges due under this section that are postmarked after the due date by which they are owed shall be considered late and may be subject to late fees or penalties: *Provided*, That payments that are received by the municipality after the due date, but that were postmarked on or before the due date shall be considered to be on time and shall not be assessed any late fees or penalties.



CHAPTER 187

(Com. Sub. for H. B. 3133 - By Delegates Shamblin, Akers, T. Howell, Petitto, J. Cannon, Ferrell, Jeffries, and Hall)

[Passed April 10, 2025; in effect from passage]

[Approved by the Governor on April 28, 2025.]

AN ACT to amend and reenact §7-1-3ff and §8-12-16 of the Code of West Virginia, 1931, as amended, relating to permitting counties and municipalities to enter into memoranda of understanding for demolition of dilapidated structures.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Authority of county commission to regulate unsafe or unsanitary structures and refuse on private land; authority to establish an enforcement agency; county litter control officers; procedure for complaints; lien and sale of land to recover costs; entry on land to perform repairs and alterations or to satisfy lien; receipt of grants and subsidies.

(a) Plenary power and authority are hereby conferred upon every county commission to adopt ordinances regulating the repair, alteration, or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of any dwellings or other buildings, except for buildings or dwellings on agricultural lands or operations as defined in §19-19-2 of this code, unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents, or other calamities, lack of ventilation, light or sanitary facilities, or any other conditions prevailing in any dwelling or building, whether used for human habitation or not,

which would cause the dwellings or other buildings to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.

(b) Plenary power and authority are hereby conferred upon every county commission to adopt ordinances regulating the removal and cleanup of any accumulation of refuse or debris, overgrown vegetation, or toxic spillage or toxic seepage located on private lands which is determined to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.

(c) The county commission, in formally adopting ordinances, shall designate an enforcement agency which shall consist of the county engineer (or other technically qualified county employee or consulting engineer), county health officer or his or her designee, a fire chief from a county fire company, the county litter control officer, if the commission chooses to hire one, and two members-at-large, one of whom has a background in, or knowledge of, agricultural operations as defined in §19-19-2 of this code, selected by the county commission to serve two-year terms. The county sheriff shall serve as an ex officio member of the enforcement agency and the county officer charged with enforcing the orders of the county commission under this section.

(d) In addition to the powers and duties imposed by this section, county litter control officers shall have authority to issue citations for open dumps, as prohibited by §22-15-10(a) of this code, unlawful disposal of litter, as prohibited by §22-15A-4 of this code, and failure to provide proof of proper disposal of solid waste, as prohibited by §22C-4-10(a) of this code, after completing a training course offered by the West Virginia Department of Environmental Protection: *Provided*, That any litter control officer who is trained and certified as a law-enforcement officer and whose certification is active has the same authority as any other law-enforcement officer to enforce all litter laws in this code. Nothing in this subsection supersedes the authority or duty of the Department of Environmental Protection or other law-enforcement officers to preserve law and order and enforce the litter control program.

(e) Any ordinance adopted pursuant to the provisions of this section shall provide fair and equitable rules of procedure and any other standards considered necessary to guide the enforcement agency, or its agents, in the investigation of dwelling or building conditions, accumulation of refuse or debris, overgrown vegetation, or toxic spillage or toxic seepage and shall provide for fair and equitable rules of procedure for instituting and conducting hearings in the matters before the county commission. Any entrance upon premises for the purpose of making examinations shall be made in a manner that causes the least possible inconvenience to the persons in possession.

(f) (1) Complaints authorized by this section shall be brought before the county commission. Complaints shall be initiated by citation issued by the county litter control officer or petition of the county engineer (or other technically qualified county employee or consulting engineer) on behalf of, and at the direction of, the enforcement agency, but only after that agency has investigated and determined that any dwelling, building, accumulation of refuse or debris, overgrown vegetation, or toxic spillage or toxic seepage is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare and should be repaired, altered, improved, vacated, removed, closed, cleaned, or demolished.

(2) The county commission shall cause the owner or owners of the private land in question to be served with a copy of the complaint. Service shall be accomplished in the manner provided in rule four of the West Virginia Rules of Civil Procedure.

(3) The complaint shall state the findings and recommendations of the enforcement agency and that unless the owner or owners of the property file with the clerk of the county commission a written request for a hearing within 10 days of receipt of the complaint, an order will be issued by the county commission implementing the recommendations of the enforcement agency.

(4) If the owner or owners of the property file a request for a hearing, the county commission shall issue an order setting this matter down for hearing within 20 days. Hearings shall be recorded

by electronic device or by court reporter. The West Virginia Rules of Evidence do not apply to the proceedings, but each party has the right to present evidence and examine and cross-examine all witnesses.

(5) The enforcement agency has the burden of proving its allegation by a preponderance of the evidence and has the duty to go forward with the evidence.

(6) At the conclusion of the hearing, the county commission shall make findings of fact, determinations, and conclusions of law as to whether the dwelling or building: Is unfit for human habitation due to dilapidation; has defects that increase the hazard of fire, accidents, or other calamities; lacks ventilation, light, or sanitary facilities; or any other conditions prevailing in the dwelling or building, whether used for human habitation or not and whether the result of natural or manmade force or effect, which would cause the dwelling or other building to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; or whether there is an accumulation of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage on private lands which is determined to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.

(7) The county commission has authority to order the owner or owners thereof to repair, alter, improve, vacate, remove, close, clean up, or demolish the dwelling or building in question or to remove or clean up any accumulation of refuse or debris, overgrown vegetation, or toxic spillage or toxic seepage within a reasonable time and to impose daily civil monetary penalties on the owner or owners who fail to obey an order.

(8) Appeals from the county commission to the circuit court shall be in accordance with the provisions of §58-3-1 *et seq.* of this code.

(g) Upon the failure of the owner or owners of the private land to perform the ordered duties and obligations as set forth in the order of the county commission, the county commission may

advertise for and seek contractors to make the ordered repairs, alterations, or improvements or the ordered demolition, removal, or clean up. The county commission may enter any contract with any contractor to accomplish the ordered repairs, alterations, or improvements or the ordered demolition, removal, or clean up.

(h) A civil proceeding may be brought in circuit court by the county commission against the owner or owners of the private land or other responsible party that the subject matter of the order of the county commission to subject the private land in question: (1) To a lien for the amount of the contractor's costs in making these ordered repairs, alterations, or improvements or ordered demolition, removal, or clean up, together with any daily civil monetary penalty imposed; (2) to order and decree the sale of the private land in question to satisfy the lien; (3) to order and decree that the contractor may enter upon the private land in question at any and all times necessary to make ordered repairs, alterations, or improvements, or ordered demolition, removal, or clean up; and (4) to order the payment of all costs incurred by the county with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action.

(i) County commissions may receive and accept grants, subsidies, donations, and services in kind consistent with the objectives of this section.

(j) In addition to the authority granted by this section, a county commission may demolish dilapidated structures within municipalities where a memorandum of understanding exists in which the municipality seeks the aid of the county commission to remove or destroy or demolish certain dilapidated properties. In those agreements, the parties may use the procedures outlined in this section of code or §8-12-16.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

Part IV. Certain Specific Powers of Municipalities and Governing Bodies.

§8-12-16. Ordinances regulating the repair, alteration, improvement, closing, demolition, etc., of structures, dwellings, or buildings that are unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; procedures.

(a) For the purposes of this section:

(1) "Code enforcement agency" means either a code enforcement department as defined by 87 CSR 7-2, as may be amended, or an enforcement agency as permitted by subsection (c) of this section.

(2) "Code enforcement agency official" means any lawful agent of a code enforcement agency.

(3) "Owner" or "landowner" means a person who individually or jointly with others:

(A) Has legal title to the property, with or without actual possession of the property;

(B) Has charge, care, or control of the property as owner or agent of the owner;

(C) Is an executor, administrator, trustee, or guardian of the estate of the owner;

(D) Is the agent of the owner for the purpose of managing, controlling, or collecting rents; or

(E) May control or direct the management or disposition of the property.

(4) "Unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare" means:

(A) Any door, aisle, passageway, stairway, exit, or other means of egress that does not conform to the approved building or fire

code of the jurisdiction as related to the requirements for existing buildings;

(B) The walking surface of any aisle, passageway, stairway, exit, or other means of egress is so warped, worn loose, torn, or otherwise unsafe as to not provide safe and adequate means of egress;

(C) Any portion of a dwelling, building, structure, or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism, or by any other cause to an extent that it is likely to partially or completely collapse, or to become detached or dislodged;

(D) Any portion of a structure or building, or any member, appurtenance, or ornamentation on the exterior that is not of sufficient strength or stability, or is not so anchored, attached, or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the original designed value;

(E) The dwelling, building, or structure, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the dwelling, building or structure is likely to fail or give way;

(F) The dwelling, building, or structure, or any portion, is clearly unsafe for its use;

(G) The dwelling, building, or structure is neglected, damaged, dilapidated, unsecured, or abandoned so as to become an attractive nuisance to children, becomes a harbor for vagrants, criminals, and criminal activity, or enables persons to resort to the dwelling, building, or structure for committing a nuisance or an unlawful act;

(H) Any dwelling, building, or structure constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to any dwelling, building, or structure provided by the approved building or fire code of the jurisdiction

or of any law or ordinance that presents either a substantial risk of fire, building collapse, or any other threat to life and safety;

(I) A dwelling, building, or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, contamination by any hazardous substance or material, including, but not limited to, substance resulting from the illegal manufacture of drugs, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical, or plumbing system, or otherwise, is determined by the code enforcement agency to be unsanitary, unfit for human habitation, or in a condition that is likely to cause sickness or disease;

(J) Any dwelling, building, or structure, because of a lack of sufficient or proper fire resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system, or other cause, is determined by the code official to be a threat to life or health; or

(K) Any portion of a building that remains on a site after the demolition or destruction of the building or structure, or whenever any building or structure is abandoned.

(b) Plenary power and authority are hereby conferred upon every municipality to adopt ordinances regulating the repair, alteration, or improvement, or the vacating and closing or removal or demolition, or any combination, of any structure, dwelling, or building, whether used for human habitation or not, that is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare.

(c) In formally adopting any ordinance under this section, the governing body shall designate the enforcement agency, which shall consist of the code enforcement agency as provided by the state building code and authorized by §29-3-5b and §8-12-13 of this code; or municipal officials as may otherwise be authorized by this code; or municipal officials or agents as authorized by rules promulgated by the State Fire Commission and approved by the Legislature; or municipal officials or agents as may otherwise be authorized by the State Fire Commission. Notwithstanding any

provision of this code to the contrary, for the purposes of this section any municipality that has not adopted the state building code may designate an enforcement agency consisting of the mayor, the municipal engineer or building inspector, and one member at large, to be selected by and to serve at the will and pleasure of the mayor, and the ranking health officer and fire chief or their designees, who shall serve as ex officio members of the enforcement agency.

(d) Any ordinance adopted under the provisions of this section must provide fair and equitable rules of procedure and any other procedures required by law or necessary and appropriate to guide the code enforcement agency, or its officials, in the investigation of any structure, dwelling, or building conditions, and in any corrective action taken by the code enforcement agency.

(e) When a code enforcement agency official enters the premises of the property for investigating or inspecting any structure, dwelling, or building, the investigation shall be performed to minimize the inconvenience to the owner or persons in possession and shall be consistent with the following:

(1) Except in exigent circumstances and as permitted by law, the enforcement agency shall provide reasonable advance notice to the owner and request permission from the owner to enter the property;

(2) If the owner cannot be located after reasonable inquiry by the code enforcement agency as required by this section, or if the owner refuses entry, the code enforcement agency may obtain an administrative search warrant from either the municipal court or the magistrate court located in the jurisdiction of the municipality or county where the structure, dwelling, or building is located. Before obtaining an administrative search warrant, a code enforcement agency official is required to make a sworn statement and prima facie case showing that the code enforcement agency was unable to gain access to the structure, dwelling, or building after reasonable and good faith efforts, and that there is a legitimate and substantial safety concern involving the structure, dwelling, or building that supports the requested entry;

(3) If granted by the court, and if the owner can be located, the code enforcement agency shall provide the owner a copy of the administrative search warrant five days before entering the property. If applicable, the code enforcement agency shall also provide the same notice to any tenant or other person in possession of the structure, dwelling, or building; and

(4) Entry is for the sole purpose of inspection of the structure, dwelling, or building for unsafe or unsanitary conditions and not for the purpose of criminal prosecution or gathering evidence for use in any criminal charge or proceeding unrelated to the unsafe or unsanitary condition of the structure, dwelling, or building.

(f) The governing body of every municipality has plenary power and authority to adopt an ordinance providing for the vacating, closing, removal, or demolition of any dwelling, structure or building by the municipality in the absence of owner agreement or court order: *Provided*, That the ordinance requires the code enforcement agency to provide lawful notice to and undertake reasonable efforts to seek agreement from the owner before taking any action permitted by this section and shall comply with the requirements set forth in this subsection:

(1) Any ordinance adopted under this subsection applies only to dwellings, structures, or buildings which meet the definition of unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare as set forth in:

(A) Paragraph (C), (E) or (H), subdivision (4), subsection (a) of this section; or

(B) Paragraph (F), (G), (I) or (K), subdivision (4), subsection (a) of this section: *Provided*, That the dwelling, building, or structure is vacant, abandoned, or has been lawfully declared unfit for human habitation; and the reasonable estimated cost of repair, rehabilitation, or corrective action exceeds the fair market value of the dwelling, building, or structure.

(2) Any ordinance adopted under this subsection must provide for the following:

(A) The code enforcement agency shall produce a written notice containing the date of the last inspection, the name of the inspector, a reasonable description of the unsafe, unsanitary, dangerous, or detrimental conditions, the corrective measures required, the allotted time to correct the substandard conditions and the allotted time the owner has to apply to the circuit court for a temporary injunction or other similar relief restraining action by the enforcement agency.

(B) The notice shall be served upon the owner or landowner by conspicuously posting and attaching a copy of the notice to the subject property, and by serving the notice on the owner or landowner in the same manner as service of a complaint as set forth in subsection (j) of this section.

(C) If the code enforcement agency cannot effect personal service on the owner, a code enforcement agency official shall subscribe a written affidavit, to be maintained for a minimum of two years, that demonstrates the structure, dwelling, or building falls within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section and sets forth the basis in reasonable detail, including documentation of same, and memorializes the code enforcement agency official's efforts to contact or get permission for entry and any corrective action from the owner; and the code enforcement agency shall publish notice of its intent to enter the property for the purpose of demolition or correction, along with the address of the property, the name of the owners and the date of the proposed action, as a Class II legal advertisement consistent with the requirements of §59-3-2 of this code, the first of which shall run at least 30 days before the date of the proposed action by the enforcement agency, and the last being no later than 20 days before the date of the proposed action by the enforcement agency.

(D) If there is no response to the notice by the owner or landowner in the time specified in the notice, then the municipality may proceed in correction or demolition of the subject dwelling, building, or structure.

(3) It is an absolute defense to any civil action by an owner, landowner, or tenant for damages resulting from the closure, demolition, or other corrective action taken by a municipality under this section: *Provided*, That the municipality acted in good faith, can demonstrate that the structure, dwelling, or building falls within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section, that the municipality followed the procedures set forth in this subsection, and that the municipality had adopted the state building code at the time of the closure, demolition, or other corrective action occurred.

(4) Any ordinance adopted under this subsection must also provide for notice to the owner of the owner's right to apply to the circuit court for a temporary injunction or other similar relief restraining correction or demolition by the enforcement agency. If the application is made by the owner, a hearing shall be had within 20 days of the application, or as soon as reasonably possible.

(A) Continuances of the hearing provided for in this subdivision may be made for cause only. If a continuance is granted upon request by the owner, the owner is required to pay into court, in the form of a bond, any reasonable and necessary costs related to the property likely to be incurred by the municipality during the continuance.

(B) At the conclusion of a hearing held under this subdivision, if the court finds that the property is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, the court shall make and enter an order granting the relief as requested by the municipality. The court may disburse any moneys paid into court by the owner in accordance with this section.

(g)(1) The governing body of every municipality has plenary power and authority to adopt an ordinance requiring the owner of any dwelling or building under determination of the State Fire Marshal, as provided in §29-3-12 of this code, or under order of the code enforcement agency of the municipality, to pay for the costs of repairing, altering, or improving, or of vacating and closing, removing or demolishing any dwelling or building, and may file a lien against the real property in question for an amount that reflects

all costs incurred by the municipality for repairing, altering, or improving, or of vacating and closing, removing, or demolishing any dwelling or building, or structure. Any municipality that adopts an ordinance under this section may authorize the municipal court to place a structure, dwelling, or building into receivership when the following circumstances are present:

(A) The owner cannot be located after reasonable inquiry by the code enforcement agency as required by this section or if the owner refuses entry;

(B) The code enforcement agency has obtained an administrative search warrant from either the municipal court or the magistrate court located in the jurisdiction of the municipality or county where the structure, dwelling, or building is located;

(C) Upon entry, the code enforcement agency has determined that the structure, dwelling, or building is salvageable and does not require immediate demolition; and

(D) The code enforcement agency has proffered to the court that the structure, dwelling or building will require demolition or presents a substantial threat to nearby structures, property, or residents due to risk of fire, structural instability, or attractive nuisance if it is not repaired, altered, or improved in the near future.

(2) If all of these circumstances are present, the municipal court may place the structure, dwelling, or building into receivership with the municipality or another entity that is capable of making the necessary repairs, alterations, and improvements to the structure, dwelling or building. Any owner of the structure, dwelling, or building may petition the municipal court to terminate the receivership at any time and, upon showing that the owner will either demolish the structure, dwelling, or building or make the necessary repairs, alterations, and improvements to the satisfaction of the code enforcement agency, the municipal court may terminate the receivership.

(h) Every municipality may also institute a civil action in circuit court against the landowner or other responsible party to obtain an order allowing the municipality to take corrective action up to and including demolition of any structure, dwelling or

building that is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; and to recover all reasonable costs and expenses incurred by the municipality with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action:

(1) No fewer than 10 days before instituting a civil action as provided in this subsection, the municipality shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the governing body's intention to institute such action.

(2) The notice shall be sent to the most recent address of the landowner of record in the office of the assessor of the county where the subject property is located and to any other address for the landowner as may exist on record with the municipality. If, for any reason, the certified mail is returned without evidence of proper receipt, the municipality shall resend the notices by first class mail, postage prepaid, and shall also post notice on the front door or other conspicuous location on the subject property.

(i) To the extent not otherwise authorized by state law, all notices of violation or correction for violations that do not fall within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section issued by the enforcement agency of a municipality that has adopted the state building code shall be served in accordance with the process set forth in the state building code. All notices of violation or correction orders for violations that do not fall within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section issued by a code enforcement agency of a municipality that has not adopted the state building code shall be served in accordance with the law of this state concerning the service of process in civil actions, except that personal service may be made by a code enforcement agency official and the method of service effectuated by mail by the clerk of a court as permitted by Rule 4(d)(1)(D) of the West Virginia Rules of Civil Procedure is effectuated by mailing by a code enforcement agency official and shall be posted in a conspicuous place on the property that is the subject of the notice of violation or correction.

(j) Any violation of an ordinance adopted under this section, may be prosecuted by the municipality consistent with state and local laws. Unless otherwise authorized by state law, prosecution of a violation shall be initiated by a complaint presented to and sworn or affirmed before a municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code in the municipality where the offense is alleged to have occurred. Unless otherwise provided by statute, the presentation and oath or affirmation shall be made by a code enforcement agency official or municipal attorney showing reason to have reliable information and belief. If from the facts stated in the complaint the municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code finds probable cause, the complaint becomes the charging instrument initiating a criminal proceeding. A complaint lawfully authorized by this subsection along with a summons setting forth the date, time, and place of appearance before a municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that personal service of a summons and complaint may be made by a code enforcement agency official. If service is made by certified mail under Rule 4(d)(1)(D) of the West Virginia Rules of Civil Procedure and delivery of the summons and complaint is refused, the code enforcement agency official, promptly upon the receipt of the notice of the refusal, shall mail to the person or entity being noticed, by first class mail, postage prepaid, a copy of the summons and complaint. If the first class mailing is not returned as undeliverable by the U. S. Postal Service, service of the summons and complaint is presumed to have been effectuated. Upon service of the summons and complaint consistent with this subsection, the violation may be prosecuted consistent with state and local law.

(k) In addition to the authority granted by this section, a municipality may seek the aid of a county commission by entering into a memorandum of understanding with the county commission to destroy or demolish certain dilapidated structures within the municipality. In those agreements, the parties may use the procedures outlined this code section or §7-1-3ff.

CHAPTER 188

(H. B. 3492 - By Delegates Rohrbach, Criss, Hanshaw (Mr. Speaker), Amos, Lucas, Riley, and Hornbuckle)

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]
[Approved by the Governor on April 30, 2025.]

AN ACT to amend and reenact §8-38-9 of the Code of West Virginia, 1931, as amended, relating to authorizing the City of Huntington to levy a special district excise tax for the benefit of the City of Huntington Economic Opportunity Development District; requiring City of Huntington to comply with requirements to hold a public hearing, submit a certain application, and receive approval as required by law; and requiring jurisdictions authorized to levy special excise tax to file a detailed annual report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§8-38-9. Authorization to levy special district excise tax.

(a) *General.* — Municipalities have no inherent authority to levy taxes and have only that authority expressly granted to them by the Legislature. The Legislature is specifically extended, and intends by this article to exercise certain relevant powers expressed in section six-a, article X of the Constitution of this state as follows: (1) The Legislature may appropriate state funds for use in matching or maximizing grants-in-aid for public purposes from the United States or any department, bureau, commission or agency thereof, or any other source, to any county, municipality or other political subdivision of the state, under such circumstances and subject to such terms, conditions and restrictions as the Legislature may

prescribe by law; and (2) the Legislature may impose a state tax or taxes or dedicate a state tax or taxes or any portion thereof for the benefit of and use by counties, municipalities or other political subdivisions of the state for public purposes, the proceeds of any such imposed or dedicated tax or taxes or portion thereof to be distributed to such counties, municipalities or other political subdivisions of the state under such circumstances and subject to such terms, conditions and restrictions as the Legislature may prescribe.

Because a special district excise tax would have the effect of diverting, for a specified period of years, tax dollars which to the extent, if any, are not essentially incremental to tax dollars currently paid into the General Revenue Fund of the state, the Legislature finds that in order to substantially ensure that such special district excise taxes will not adversely impact the current level of the General Revenue Fund of the state, it is necessary for the Legislature to separately consider and act upon each and every economic development district which is proposed, including the unique characteristics of location, current condition and activity of and within the area included in such proposed economic opportunity development district and that for such reasons a statute more general in ultimate application is not feasible for accomplishment of the intention and purpose of the Legislature in enacting this article. Therefore, no economic opportunity development district excise tax may be levied by a municipality until after the Legislature expressly authorizes the municipality to levy a special district excise tax on sales of tangible personal property and services made within district boundaries approved by the Legislature.

(b) *Authorizations.* — The Legislature authorizes the following municipalities to levy special district excise taxes on sales of tangible personal property and services made from business locations in the following economic opportunity development districts:

(1) The City of South Charleston may levy a special district excise tax for the benefit of the South Charleston Park Place

Economic Opportunity Development District which comprises up to two thousand one hundred contiguous acres of land.

(2) The City of Huntington may levy a special district excise tax for the benefit of the City of Huntington Economic Opportunity Development District which comprises 146 acres of land, subject to holding public hearing as provided in §8-38-6 of this code, submitting the application required by §8-38-6 and §8-38-7 of this code, and obtaining the approval of the West Virginia Division of Economic Development as provided in §8-38-7 of this code.

(c) *Annual Reports.* — Notwithstanding any other provision of this code to the contrary, any jurisdiction that imposes a special district excise tax shall compile and issue an annual report for each fiscal year of operation, such year beginning on July 1 and ending on June 30. The annual report shall be issued on or before the next succeeding December 31 after the close of each fiscal year.

(1) The annual report shall be filed with the Governor, the Secretary of Commerce, the Secretary of Revenue, and the Joint Committee on Government and Finance.

(2) The annual report shall set forth in detail the following information:

(A) The amount of special district excise tax collected during the fiscal year;

(B) The total assessed value of all property located in the district at the inception of the district;

(C) The total assessed value of all property for the most recent property tax year in the district;

(D) A list of all businesses operating in the special district during the report year;

(E) The amount of indebtedness attributed to the sales tax increment financing project;

(F) The date of maturity for debts and annual amortization payment schedules for debt financed with the sales tax increment financing project;

(G) The projected date for retirement of all debt financed with the sales tax increment financing project;

(H) The projected date of dissolution of the special district.



CHAPTER 189

(H. B. 3517 - By Delegates Akers, Hanshaw (Mr. Speaker), and Rohrbach)

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]

[Approved by the Governor on April 30, 2025.]

AN ACT to amend and reenact §8-35-1 and §8-35-2 of the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §6-9D-1, §6-9D-2, §6-9D-3, §6-9D-4, §6-9D-5, §6-9D-6, §6-9D-7, §6-9D-8, §6-9D-9, §6-9D-10, §6-9D-11, §6-9D-12, §6-9D-13, and §6-9D-14; and to amend said code by adding thereto by adding four new sections, designated §8-35-3, §8-35-4, §8-35-5 and §8-35-6, all relating generally to fiscal watch or fiscal emergencies of local governments; setting out findings; defining terms; setting out auditable conditions of local governments; providing details of initiation of a fiscal watch review; providing guidelines for identifying potential for declarations of a fiscal watch or fiscal emergency; providing for rulemaking; providing conditions constituting grounds for a fiscal watch; relating to the declaration of the existence of a fiscal watch; providing for a financial recovery plan; relating to determining the existence of a fiscal emergency; providing conditions constituting grounds for a fiscal emergency; establishing a process for appeal of a decision of the State Auditor that a fiscal emergency exists; relating to the establishment of a financial planning and supervision committee and further rulemaking authority of the State Auditor; relating to what constitutes compliance of this article by a local government; relating to a prohibition against relief under federal bankruptcy laws unless otherwise authorized; providing a severability clause; modernizing the process for the dissolution and forfeiture of certain municipalities; modernizing the process for the voluntary

dissolution of municipal corporations; establishing the process for the involuntary dissolution of municipal corporations; establishing that the State Auditor shall serve as a special receiver upon declaration of the forfeiture of the charter or certificate of incorporation, or the certification of the election for voluntary dissolution, or upon an order by the Circuit Court for involuntary dissolution of a municipality; establishing and relating to the disposition of property belonging to a dissolved municipal corporation; establishing the process for sale and liquidation of a dissolved municipality's assets.

Be it enacted by the Legislature of West Virginia:

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9D. LOCAL FISCAL EMERGENCIES.

§6-9D-1. Legislative findings.

(a) The Legislature finds:

(1) That local governments are instrumentalities of this state, and the Legislature must act for the public health, safety and welfare of its citizens to promote fiscal integrity of local governments to prevent future emergencies;

(2) That negative economic changes, waste, fraud or abuse by public officials, or a combination thereof, necessarily result in a significant impact on the revenues and effectiveness of local governments, and cause significant indebtedness without any current possibility for recovery; and

(3) That the failure of a local government to take actions on its own to address such a condition will adversely affect the health, safety and welfare not only of the residents of the local government, but also of other people of the state.

(b) It is the intent of the Legislature to direct the State Auditor or a designee to:

(1) Take necessary and appropriate actions to limit and restrict the powers of local governments to prevent the abuse of statutory powers;

(2) Require reports and examinations of their financial condition, transactions, operations and undertakings;

(3) Ensure the fiscal integrity of local governments so that they may provide for the health, safety and welfare of their citizens; and

(4) Determine if local governments have paid due principal and interest on their debt obligations, meet financial obligations to their employees, vendors and suppliers, and provide for proper financial accounting procedures, budgeting and taxing practices.

(c) The Legislature further finds that the fiscal emergency conditions described in this article result from and constitute abuses of the powers of a local government to borrow money, contract debts and levy taxes, and that those conditions impair and threaten the health, safety and welfare of the people of the state within and beyond the local government.

§6-9D-2. Definitions.

As used in this article:

“Committee” means a financial planning and supervision group created pursuant to this article.

“Debt obligations” means bonds, notes, certificates of indebtedness, bond anticipation notes, current revenue notes, local government fund notes, leases or other obligations issued or incurred in borrowing money, or to renew, refund, fund or refinance, or issued in exchange for, such obligations, and any interest coupons pertaining thereto.

“Default” means failure to pay the principal of or the interest on a debt obligation, or failure to make other payment to be made to the holder or owner of a debt obligation, in the full amount and at the time provided for in the contractual commitment with respect thereto, unless the time for such payment has been extended by the

owner or holder of the debt obligation without penalty or premium and without the effect of subjecting the local government to the initiation of remedies pertaining to such debt obligation or other debt obligations.

“Deficit fund” means the general fund or any other fund of a local government that, as at the time indicated, has a deficit balance or a balance that is less than the amount required to be in such fund pursuant to law or pursuant to contractual requirements, demonstrating that over a period of time expenditures charged or chargeable to the fund have exceeded moneys credited to the fund, or that moneys credited to the fund have not been in the amounts required by law or contractual requirements.

“Effective financial accounting and reporting system” means an accounting and reporting system as prescribed by the West Virginia State Auditor’s Office.

“Employee benefits” means expenditures for goods and services furnished to local government officers or employees by the local government, including, but not limited to, such benefits as food, temporary housing and clothing, and the provision of pension, retirement, disability, hospitalization, health care, insurance or other benefits to employees requiring the advance payment of money other than directly to employees or other beneficiaries, or the deposit or reservation of money for such purpose.

“Estimated revenues” means the aggregate estimates of revenue receipts in the budget of the general fund of a local government and other funds as estimated and supplemented, modified, or amended by the local government, as approved by the West Virginia State Auditor’s Office or other regulatory agency.

“Financial recovery plan” means the financial plan approved by the committee in accordance with §6-9D-6 of this code, as it may from time to time be amended in accordance with this article.

“Fiscal emergency” means the existence of fiscal emergency conditions as set forth in this article.

“Fiscal emergency period” means the period of time commencing on the date when the determination of a fiscal emergency is made by the State Auditor or a designee and ending when the determination of termination is made and certified.

“Fiscal watch” means the existence of fiscal watch conditions as provided in this article.

“General fund” means the fund used to account for and report the primary operating activities of the local government.

“General fund budget” means the estimates of revenue and expenditure as a plan of financial operation of the general fund during the applicable fiscal year as approved by the West Virginia State Auditor’s Office.

“Local government” means any unit of local government within the state, including a county, municipality, and any other authority, board, commission, district, office, public authority, public corporation, or other instrumentality of a county, municipality, or any combination of two or more local governments.

“Other funds” means funds other than the general fund, including, but not limited to, special revenue funds, capital project funds, debt service funds, permanent funds, enterprise funds, internal service funds, pension trust funds, custodial funds, investment trust funds, and private purpose trust funds.

“Payroll” means compensation due and payable to employees of local government other than employee benefits.

§6-9D-3. Auditable Condition of Local Governments.

Notwithstanding the powers and duties granted to the State Auditor in §6-6-1 *et seq.* the State Auditor or designee may determine that a local government’s accounts, records, files, or reports have not been maintained in accordance with §6-9-2 of this code. The State Auditor or designee shall notify the local government, in writing, of the deficiencies present and the action necessary to present the accounts, records, files, or reports in an

auditable condition. Furthermore, the State Auditor or designee may prescribe the deadline for the local government in completing the necessary action and institute a fiscal monitoring plan to improve the local government's financial records.

§6-9D-4. Initiating fiscal watch review.

(a) A local government may undergo a fiscal watch review by the State Auditor to determine whether it is approaching a state of fiscal emergency. A fiscal watch review shall be initiated by a written request to the State Auditor or a designee from the governing body when duly authorized by a majority of the members of such body; or may be initiated by the State Auditor or a designee if conditions for a fiscal watch have been determined to exist. Fiscal watch conditions include but are not limited to: (1) The inability of a local government to meet financial obligations; (2) the lack of adequate financial records necessary to conduct an examination pursuant to §6-9-1 *et seq.* of this code; or (3) an examination pursuant to §6-9-1 *et seq.* of this code would cause an undue financial burden to the local government.

(b) The State Auditor or a designee will notify the local government when a fiscal watch review will or will not be conducted. The State Auditor's Office will perform the fiscal watch review, which may be substituted for an examination, as required by §6-9-1 *et seq.* of this code at the discretion of the State Auditor or a designee.

(c) All working papers acquired or created to produce the fiscal review shall be considered confidential pursuant to §6-9-9b of this code.

§6-9D-5. Guidelines for identifying potential for declarations of fiscal watch or fiscal emergency; rulemaking authority.

(a) The State Auditor or a designee shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, setting forth guidelines for identifying fiscal practices and budgetary conditions of local government that, if

uncorrected, could result in declaration of a fiscal watch or fiscal emergency.

(b) If the State Auditor or a designee determines that a local government is engaging in any of the practices set forth in the legislative rule promulgated pursuant to the provisions of this section or that any of those conditions exist, the State Auditor or a designee may declare the local government to be under a fiscal watch.

(c) The State Auditor or a designee, may visit and inspect any local government that is declared to be under a fiscal watch. The State Auditor or a designee may provide technical assistance to the local government in implementing proposals to eliminate the practices or budgetary conditions that prompted the declaration of fiscal watch and may make recommendations concerning those proposals.

§6-9D-6. Conditions constituting grounds for fiscal watch.

In addition to the conditions set out in the legislative rule promulgated pursuant to the provisions of §6-9D-11 of this code the following also constitute grounds for a fiscal watch may include, but are not limited to:

(1) Accounts have been due and payable for more than 30 days or for which a penalty was added for failure to pay. Accounts include, but are not limited to, final judgments, employee benefits payments due and payable, and amounts due and payable to persons and other governmental entities and including any interest and penalties thereon. Accounts that are due and payable do not include any account, or portion of any account, that is being contested in good faith.

(2) The deficit amount within the general fund for the preceding fiscal year exceed the estimated revenues made in the general fund budget of the current fiscal year.

(3) The local government has failed to comply with debt covenants as required by the issuer of any debt with such requirement.

§6-9D-7. Declaring existence of fiscal watch; financial recovery plan.

(a) Upon determining that one or more of the conditions constituting grounds for a fiscal watch are present, the State Auditor or a designee shall issue a written declaration of the existence of a fiscal watch and provide the same to the governing body of the local government.

(b) The fiscal watch shall be in effect until the State Auditor or a designee determines that the conditions have been satisfactorily addressed, cancels the watch, or until the State Auditor or a designee determines that a state of fiscal emergency exists. The State Auditor or a designee, shall provide such technical and support services to the municipal corporation, county or political subdivision after a fiscal watch has been declared to exist as the State Auditor or a designee considers necessary and provide recommendations to address the fiscal watch conditions.

(c) Within 90 days after the day a written declaration of the existence of a fiscal watch is issued under this section, the governing body of the local government for which a fiscal watch was declared shall submit to the State Auditor or a designee a financial recovery plan that shall identify actions to be taken to eliminate all of the conditions described in §6-9D-6 of this article, and shall include a schedule detailing the approximate dates for beginning and completing the actions and a five-year forecast reflecting the potential effects of the actions. The financial recovery plan also shall evaluate the feasibility of entering into shared services agreements with other political subdivisions for the joint exercise of any power, performance of any function, or rendering of any service, if not precluded by statute. The financial recovery plan is subject to review and approval by the State Auditor or a designee pursuant to the provisions of the rules promulgated pursuant to this article. The State Auditor or a designee may extend the amount of time by which a financial recovery plan is required to be filed, for good cause shown.

(d) The State Auditor or a designee may declare that a fiscal emergency condition exists under this article in the municipal

corporation, county or political subdivision if either of the following applies:

(1) A feasible financial recovery plan for a local government filed pursuant to the provisions of this article and for which a fiscal watch was declared is not submitted within the time period prescribed by this section, or within any extension of time thereof; or

(2) The State Auditor or a designee finds that a local government for which a fiscal watch has been declared has not made reasonable proposals or otherwise taken action to discontinue or correct the fiscal practices or budgetary conditions that prompted the declaration of fiscal watch, and the State Auditor or a designee determines a fiscal emergency declaration is necessary to prevent further decline.

(e) If the State Auditor or a designee finds that a local government declared to be under a fiscal watch has not made reasonable proposals or otherwise taken action to discontinue or correct the fiscal practices or budgetary conditions that prompted the declaration of fiscal watch, and if the State Auditor or a designee considers it necessary to prevent further fiscal decline, the State Auditor or a designee may determine that the local government should be in a state of fiscal emergency as set forth in this article

§6-9D-8. Determining existence of fiscal emergency conditions.

(a) The existence of fiscal emergency conditions as set forth in §6-9D-9 of this code shall be determined by the State Auditor or a designee as set forth in rules authorized pursuant to this article. Fiscal emergency condition determinations shall be set forth in written reports by the State Auditor or a designee, which shall be filed with the governing body, the State Treasurer, Secretary of State, Governor, and Legislative Auditor.

(b) In making such determination, the State Auditor or a designee may rely on reports or other information filed or otherwise made available by the local government, accountants'

reports, or other sources and data the State Auditor or a designee considers reliable for such purpose. The determination of a fiscal emergency condition may be made without need of the specific amounts noted related to such conditions.

§6-9D-9. Fiscal emergency conditions.

(a) The conditions constituting a fiscal emergency of a local government may include, but are not limited to:

(1) The existence, of a default on any debt obligation for more than 30 days.

(2) The failure to make payment of all payroll to employees of the local government in the amounts and at the times required by law, ordinances, resolutions, or agreements.

(3) The failure to make payment of all employee benefits of the local government in the amounts and at the times required by law, ordinances, resolutions, or agreements.

(4) The existence of a condition in which accounts were due and payable from the general fund and that either had been due and payable for at least 30 days or to which a penalty has been added for failure to pay, including, but not limited to, final judgments, employee benefits payments due and payable, and amounts due and payable to persons and other governmental entities and including any interest and penalties thereon. Accounts due and payable do not include any account, or portion of any account, that is being contested in good faith.

(5) The deficit amount within the general fund for the preceding fiscal year exceed the estimated revenues made in the general fund budget of the current fiscal year.

(6) The local government has failed to comply with debt covenants as required by the issuer of any debt with such requirement.

(7) Any such rule, as proposed by the State Auditor or a designee for legislative approval in accordance with the provisions

of §29A-3-1 *et seq.* of this code, identified as indicators of a financial emergency condition.

(8) The State Auditor or a designee declares a fiscal emergency pursuant to §6-9D-8 of this code.

(b) Any condition described in subdivisions (4), (5), (6) or (7) of subsection (a) of this section shall not constitute a fiscal emergency condition if the local government clearly demonstrates to the satisfaction of the State Auditor or a designee that such condition no longer exists prior to the time of the determination.

(c) Neither the time periods nor the amounts used in subsection (a) of this section to determine what constitutes a fiscal emergency condition of a local government for purposes of this article authorize actions otherwise contrary to law or any agreement of the local government.

§6-9D-10. Appeal of decision of State Auditor.

(a) A determination by the State Auditor or a designee that a fiscal emergency condition does not exist is final, conclusive and not appealable. A determination by the State Auditor or a designee under this section that a fiscal emergency exists is final, except that the governing body affected by a determination of the existence of a fiscal emergency condition under this section, when authorized by a majority of the members of their governing body, may appeal the determination of the existence of a fiscal emergency condition to the circuit court of the county having territorial jurisdiction over the local government. The appeal shall be heard expeditiously by the circuit court for good cause shown and, except as otherwise provided in this code, shall take precedence over all other civil matters except earlier matters of the same character. Notice of such appeal must be filed with the State Auditor or a designee and such court within 30 days after the notification of a fiscal emergency determination by the State Auditor or a designee to the governing body of the local government as provided for in subsection (a) of this section.

(b) Upon such appeal, determinations of the State Auditor or a designee shall be presumed to be valid and the local government shall have the burden of proving, by clear and convincing evidence, that each of the determinations made by the State Auditor or a designee as to the existence of a fiscal emergency condition under this article was in error. If the local government fails, upon presentation of its case, to prove by clear and convincing evidence that each such determination by the State Auditor or a designee was in error, the court shall dismiss the appeal. The local government and the State Auditor or a designee may introduce any evidence relevant to the existence or nonexistence of such fiscal emergency conditions at the times indicated in the applicable provisions of subsections (a) and (b) of this section.

(c) The pendency of any such appeal shall not affect or impede the operations of this article; no restraining order, temporary injunction, or other similar restraint upon actions consistent with this article shall be imposed by the court or any court pending determination of such appeal; and the actions of the State Auditor taken pursuant to this article may continue regardless of the pendency of any such appeal. Any action taken or contract executed pursuant to this article during the pendency of such appeal is valid and enforceable among all parties, notwithstanding the decision in such appeal. If the circuit court reverses the determination of the existence of a fiscal emergency condition by the State Auditor or a designee, the determination no longer has any effect, and any procedures undertaken as a result of the determination shall be terminated.

(d) All expenses incurred by the State Auditor or a designee relating to a determination or termination of a fiscal emergency or a fiscal watch under this article, including providing technical and support services, or for conducting a financial review, shall be reimbursed from an appropriation for that purpose. If necessary, the governing body of the local government may provide sufficient funds for these purposes.

§6-9D-11. Financial planning and supervision committee; rule-making authority.

(a) Upon the occurrence of a fiscal emergency in any local government, there is established, with respect to that local government, a supervising committee to perform essential governmental functions of the local government to be known as the “financial planning and supervision committee for (name of local government)”, which, in that name, may exercise all authority vested in such a committee provided by this article. Furthermore, if a local government in which fiscal watch or fiscal emergency exists has failed to develop a financial recovery plan the “financial planning and supervision committee for (name of local government)” may develop such a plan for the local government.

(b) The State Auditor shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, setting forth the following:

(1) Minimum requirements for the composition of the members of said committee;

(2) The rules of governance for such a committee;

(3) Requirements for the detailed financial recovery plan to be submitted by the subject local government;

(4) The powers, duties and functions of the committee;

(5) The payment of expenses and obligations;

(6) The establishment of enhanced financial reporting;

(7) The requirements of the local government operating under the plan;

(8) Recourse for a noncompliant local government;

(9) Limitations for appropriations;

(10) Communications of the committee;

(11) The approval of debt obligations;

(12) The issuance of general obligation, special obligation, or revenue bonds and notes in anticipation of bonds; and

(13) The continuance and dissolution of the committee.

§6-9D-12. Compliance.

(a) Local government officials shall:

(1) Take the necessary corrective action recommended by the State Auditor or designee pursuant to §6-9D-3 of this code to present financial records in an auditable condition.

(2) Complete any recommendations imposed by the State Auditor or designee pursuant to §6-9D-7 of this code.

(3) Provide a financial recovery plan in accordance with §6-9D-7 of this code.

(4) Make reasonable proposals or otherwise take action to discontinue or correct the fiscal practices or budgetary conditions that prompted the declaration of fiscal watch or fiscal emergency.

(5) Comply with the financial recovery plan instituted by a financial planning and supervision committee created pursuant to §6-9D-11 of this code.

(b) If local government officials fail to adequately comply with the provision of this section, the State Auditor or designee may institute appropriate recourse measures pursuant to the rules authorized by §6-9D-11 of this code.

§6-9D-13. Prohibition against relief under federal bankruptcy laws unless authorized.

(a) No county, municipality, school district, authority, division, instrumentality, political subdivision, or public body corporate created under the Constitution or laws of this state shall be authorized to file a petition for relief from payment of its debts as they mature or a petition for composition of its debts under any federal statute providing for such relief or composition or otherwise to take advantage of any federal statute providing for the

adjustment of debts of political subdivisions and public agencies and instrumentalities without the express, written permission of the State Auditor.

(b) No chief executive, mayor, board of commissioners, city council, board of trustees, or other governmental officer, governing body, or organization shall be empowered to cause or authorize the filing by or on behalf of any county, municipality, school district, authority, division, instrumentality, political subdivision, or public body corporate created under the Constitution or laws of this state of any petition for relief from payment of its debts as they mature or a petition for composition of its debts under any federal statute providing for such relief or composition or otherwise to take advantage of any federal statute providing for the adjustment of debts of political subdivisions and public agencies and instrumentalities without the express, written permission of the State Auditor.

§6-9D-14. Severability.

(a) In case any section or provision of this article, including any condition or prerequisite to any action or determination thereunder, or in case any act or action, or part thereof, made, or taken under this article, or any application thereof, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect the remainder thereof or any other section or provision of this article, including any condition or prerequisite to any action or determination thereunder, or any agreement, act or action, or part thereof, made, entered into, or taken under such article, which shall be construed and enforced and applied as if such illegal or invalid portion were not contained therein, nor shall such illegality or invalidity or any application thereof affect any legal and valid application thereof, and each such section, provision, agreement, act, or action, or part thereof, shall be deemed to be effective, operative, made, and entered into or taken in the manner and to the full extent permitted by law.

(b) Any action or proceeding bringing into question the interpretation, legality, or validity of any provision of this article, the existence or authority, or the legality or validity of any act, of

the committee or the State Auditor or of any action taken under this article, is a matter of great public interest to the state and shall be advanced on the docket of the court and expedited to final determination.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 35. DISSOLUTION OF MUNICIPALITIES.

Part I. Forfeiture of Charter or Certificate of Incorporation.

§8-35-1. Forfeiture of charter or certificate of incorporation; notice; dissolution of municipality.

(a) Any municipality heretofore incorporated or which shall hereafter be incorporated which shall fail for one year to exercise its corporate powers and privileges, or which has not 20 qualified voters, or in which there were not 20 legal votes cast at its last election, or the population of which shall be reduced below 100 persons and so remain for six consecutive months, shall in either event have its charter or certificate of incorporation and all rights, powers and privileges so conferred upon such municipality forfeited and declared dissolved.

(b) The county commission of the county wherein any such municipality or the major portion of the territory thereof is located shall have jurisdiction to hear and determine all matters relating to the forfeiture and dissolution of such charter or certificate of incorporation, upon the petition of one or more of its qualified voters, or the State Auditor, and to dissolve such municipal corporation. Ten days' notice of the filing of such petition with the clerk of the county commission of such county, served upon the mayor and recorder, or on the last mayor or recorder thereof, shall be sufficient notice upon which such county commission shall so act, and upon the proper proof of the allegations of such petition, any such charter or certificate of incorporation shall be declared forfeited and the municipal corporation dissolved and all debts of such municipality shall be ordered paid and the forfeiture and dissolution shall become effective when such debts have been paid

or when the State Auditor has fully exercised the actions authorized by §8-35-4 of said code.

(c) A petition for forfeiture shall be filed with the clerk of the county commission. The petition shall be in writing and set forth the reasons for the request to forfeit and dissolve the municipality. The petition for dissolution shall be served upon the mayor and recorder, or on the last mayor or recorder thereof.

(d) The State Auditor shall promptly conduct an examination under the authority granted under §6-9-1 *et seq.* of this code, to determine the financial condition of the municipality.

Part II. Voluntary Dissolution of Municipalities.

§8-35-2. Voluntary dissolution of municipal corporation.

(a) A petition for dissolution shall be filed with the governing body of the municipality. The petition shall be in writing, set forth the reasons for the request to dissolve the municipality, and be signed by not less than 25 percent of the qualified voters of the municipality as shown by the last preceding statewide general election. The petition for dissolution shall be served upon the mayor and recorder, or on the last mayor or recorder thereof.

(b) Upon the filing of a qualified petition for dissolution of any municipal corporation, the governing body thereof shall submit to the qualified voters of such municipal corporation at the next regular municipal election, or at a special municipal election called for that purpose, the question of continuing or dissolving such municipal corporation. It shall be the responsibility of the governing body to verify the total number of eligible petitioners and to determine whether the required percentage of petitioners has been obtained. The governing body shall provide written notice of the election to the State Auditor within five days of determining an election date. The ballots, or ballot labels where voting machines are used, shall have written or printed on them the words:

Shall the municipality of _____ (name of municipality subject to dissolution) be dissolved?

() Yes.

() No.

(c) The dissolution election shall be conducted in accordance with applicable election laws.

(d) If a majority of the legal votes cast be for dissolution, then such municipal corporation shall by operation of law be dissolved at the expiration of six (6) months from the date of the election on the question. The State Auditor shall promptly conduct an examination under the authority granted under §6-9-1 *et seq.* of this code, to determine the financial condition of the municipality. If a majority of the legal votes cast be for continuance, then such municipal corporation shall continue in existence unless and until dissolved at some later date under the provisions of this section or §8-35-1 of this code.

Part III. Involuntary Dissolution of Municipal Corporation.

§8-35-3. Involuntary dissolution of municipal corporation.

(a) The Prosecuting Attorney for the county where such municipality or the majority portion of the territory thereof is located, or the State Auditor, may petition for involuntary dissolution of a municipality when the government of a municipality ceases to function by reason of the following:

(1) General municipal elections have not been called in the municipality for two successive general municipal elections; and

(2) A majority of all the members of the governing body fail to qualify for two successive general municipal elections.

(b) The petition requesting involuntary dissolution shall be filed in the circuit court in the county in which such municipality or the majority portion of the territory thereof is located. The petition shall state the facts which justify the request and shall set forth a detailed statement of the assets and liabilities of the municipality insofar as they can be ascertained. The petition shall

state the facts which justify the request insofar as they can be ascertained.

(c) Upon the filing of a petition for the involuntary dissolution of a municipality, the circuit court shall fix a date for a hearing on the request and written notice shall be provided to the State Auditor, and the Prosecuting Attorney for the county where such municipality or the majority portion of the territory thereof is located, within five days. The date of the hearing shall be not less than 30 days after the date of filing. The petitioner shall give at least 20 days' notice of the hearing by publication as a Class II legal advertisement in compliance with the provision of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be in a newspaper of general circulation in the municipality, and by posting copies of the notice in a manner consistent with court proceedings. The notice shall state the purpose of the petition and the date and place of the hearing.

(d) The State Auditor shall promptly conduct an examination under the authority granted under §6-9-1 *et seq.* of this code, to determine the financial condition of the municipality.

(e) Any person owning property in or registered to vote in the municipality may appear at the hearing and give testimony for or against dissolution of the municipality. If the court finds that the government of the municipality has ceased to function because of the reasons listed in subsection (a), it shall enter an order for dissolution of the municipality. The order of the circuit court shall state when the dissolution shall take effect and appoint the State Auditor to act as special receiver to wind up the affairs of the municipality and dispose of its property.

(f) The order of dissolution shall be filed with the clerk of the county commission and the office of the Secretary of State.

Part IV. Disposition of Property, Debts And Liabilities.

§8-35-4. State Auditor as special receiver.

(a) Upon declaration of the forfeiture of the charter or certificate of incorporation, or the certification of the election for

voluntary dissolution, or upon an order by the circuit court for involuntary dissolution, as set forth in this article, the State Auditor shall by operation of law, act as special receiver for the dissolved municipality.

(b) The State Auditor, acting as special receiver of the dissolved municipality, shall have the power and authority to:

(1) Take legal control of assets, including municipal corporate property, moneys, claims, demands and taxes collected or uncollected;

(2) Protect assets;

(3) File claims on behalf of the dissolved municipality in receivership;

(4) Initiate necessary and proper bankruptcy proceedings, including, but not limited to filing a petition in the name of the municipal corporation under Chapter 9 of Title 11 of the United States Code, and to act on the municipality's behalf in such proceeding, to distribute assets to claimants or creditors;

(5) Any such actions as the State Auditor may deem necessary and appropriate to wind up the affairs of the municipality;

(6) Any excess of amounts required to pay corporate debts shall be maintained in a special fund titled "municipal dissolution account" to be controlled by the State Auditor to offset the costs associated with conducting examinations and legal expenses pursuant to the provisions of this article;

(7) Further powers and duties of the State Auditor acting as a special receiver shall be set out in rules authorized pursuant to the provisions of this article. These shall include, but are not limited to:

(A) The manner in which the State Auditor acting as a special receiver may gain access to and control over bank account and public funds;

(B) The manner in which the State Auditor acting as a special commissioner signs or records deeds, releases, or contracts;

(C) The manner in which the State Auditor acting as a special commissioner transfers or receives title to real or personal property;

(D) The manner in which the State Auditor acting as a special commissioner executes legally binding documents on behalf of a dissolved local government.

§8-35-5. Disposition of property belonging to dissolved municipal corporation.

(a) No dissolution of an incorporated municipality shall impair the rights of any person in any contract or agreement to which the municipality is a party.

(b) The deposits and investments belonging to the dissolved municipality shall be used first to pay the municipality's debts and liabilities.

(c) In the event that deposits and investments belonging to the municipality are not sufficient to satisfy its debts and liabilities, then the State Auditor may initiate the liquidation of the dissolved municipality's property pursuant to §8-35-3 of this code.

§8-35-6. Sale and liquidation of dissolved municipal assets.

(a) If the State Auditor, as special receiver, makes a determination that a dissolved municipality's real and/or personal property must be liquidated to satisfy its debts and liabilities then a public auction may be conducted. The property shall be sold either at an on-site public auction or by utilizing an Internet-based public auction service, or at a suitable location within the county wherein the dissolved municipality was principally located and such shall be conducted by the State Auditor. Before making such sale, notice of the time, terms, manner and either the location of the sale or the Internet-based public auction service to be utilized, together with a brief description of the property to be sold, shall be published as a Class II legal advertisement in compliance with the

provision of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county.

(b) The provisions of subsection (a) of this section concerning sale at public auction shall not apply to the State Auditor selling or disposing of the property for public use to:

(1) The United States of America its instrumentalities, agencies or political subdivisions;

(2) The State of West Virginia, or its political subdivisions, including county boards of education, volunteer fire departments, and volunteer ambulance services; or

(3) Any authority, commission, instrumentality, or agency established by act of the State of West Virginia.

(c) For all sales made pursuant to this section, the State Auditor is not required to exclusively consider the present commercial or market value of the property.

(d) No officer or employee of the State Auditor or the Prosecuting Attorney for the county where such municipality or the majority portion of the territory thereof is located, or his or her immediate family, may purchase or acquire any property municipal assets disposed of pursuant to this section.

CHAPTER 190

(Com. Sub. for H. B. 2836 - By Delegates Rohrbach, Hornby, Amos, Funkhouser, Browning, Chiarelli, Holstein, Bridges, Pritt, Pinson, and Dean)

[Passed April 11, 2025; in effect 90 days from passage (July 10, 2025)]
[Approved by the Governor on April 28, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §20-2D-1, §20-2D-2, §20-2D-3, §20-2D-4, §20-2D-5, §20-2D-6, §20-2D-7, §20-2D-8, and §20-2D-9, all relating to authorizing rehabilitation of wildlife, establishing a system for issuing permits for persons to provide rehabilitation of orphaned, sick, and injured wildlife; setting forth a purpose for the legislation; defining certain terms; establishing qualifications and duties of wildlife rehabilitators; providing for the issuance of permits by the Division of Natural Resources; listing criteria for revocation of permits; establishing criminal penalties and fines for violations; and providing that the Director of the Division of Natural Resources may propose legislative rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. WILDLIFE REHABILITATION.

§20-2D-1. Purpose.

The purposes of this article are to:

(1) Establish a program within the West Virginia Division of Natural Resources Wildlife Resources Section for the short-term rehabilitation and subsequent release of orphaned, sick, and injured wildlife, by authorized persons, including standards for such program.

(2) Establish a wildlife rehabilitation permit system to include criteria for issuing permits to persons to provide for the care, treatment, and release of orphaned, sick, or injured wildlife. The permit process shall be designed to ensure all persons engaged in rehabilitation of wildlife are qualified, undergo periodic training, house wildlife under proper conditions, provide a high level of humane care for wildlife, and are protected as much as is possible from injury caused by wildlife or from contracting or spreading disease that may be carried by wildlife.

§20-2D-2. Definitions.

(a) As used in this article:

(1) “Applicant” means a person who applies for a West Virginia Division of Natural Resources wildlife rehabilitation permit.

(2) “Continuing education and training” means instruction, courses of instruction, study guides and other materials determined to be acceptable for use by wildlife rehabilitation permit holders to satisfy the requirements for renewal of permits upon expiration established by the Division of Natural Resources.

(3) “Facilities” means equipment, housing, or other shelter used in, or necessary for, the rehabilitation of wildlife.

(4) “Federal permit” means a permit for the rehabilitation of migratory birds issued by the United States Fish and Wildlife Service.

(5) “In-facility assistant” means any person listed on an approved wildlife rehabilitation permit issued by the Division who is allowed to assist the permit holder with wildlife care within a wildlife rehabilitation facility.

(6) “Non-releasable wildlife” means rehabilitated wildlife that cannot be released due to a permanent injury or degenerative physical condition as a result of illness that would significantly reduce the ability to survive in the wild.

(7) “Permit” means a wildlife rehabilitation permit issued by the Division.

(8) “Permit holder” means a person who possesses a valid rehabilitation permit issued by the Division.

(9) “Public exhibition” means any display to the general public of wildlife undergoing rehabilitation, either on the permit holder’s premises or elsewhere.

(10) “Transport” means the act by a permit holder of causing or attempting to cause wildlife to be carried or moved in any way, except within the permit holder’s premises.

(11) “Wildlife rehabilitation” means the act or acts of receiving, temporarily confining, providing or arranging for veterinary care, releasing, and humanely dispatching orphaned, sick, or injured native wildlife.

(12) “Wildlife rehabilitator” means a person who holds a valid wildlife rehabilitation permit issued by the Division of Natural Resources.

(13) All other terms have the meaning prescribed in §20-1-2 *et seq.*

§20-2D-3. Wildlife rehabilitation.

(a) No person may keep, hold, or possess in captivity any orphaned, sick, or injured wildlife without receiving a wildlife rehabilitation permit issued by the director. Except, holders of a United States Fish and Wildlife Service Wildlife Rehabilitation Permit to rehabilitate migratory birds may rehabilitate migratory birds in accordance with the Federal permit and a veterinarian with an active West Virginia veterinary medicine license may provide emergency veterinary care for wildlife. Persons who have been issued a permit by the director to conduct wildlife rehabilitation may be authorized to receive, temporarily confine, provide veterinary care for, release, and humanely dispatch native wildlife in this state provided that the methods of and documentation for such activities shall be in accordance with all permit conditions.

(b) Any person may capture and transport orphaned, injured, or sick wildlife without unnecessary delay directly to a permitted Wildlife Rehabilitator or a veterinarian licensed in this state, but only after contacting the individual or entity to which the wildlife is to be transferred and confirming that the wildlife will be accepted. Prior to transport, no care may be provided to the wildlife unless directed by a permitted Wildlife Rehabilitator.

(c) Rehabilitated native wildlife that recover and are not permanently impaired shall be returned to the wild, and preferably returned to the location where found. Prior to release, consent must be obtained from a landowner for wildlife released on private property, or a government administrator for wildlife released on city, county or state property.

(d) The director may restrict the rehabilitation of certain species of wildlife, either statewide or in certain geographic areas, as needed, due to disease, overpopulation, or other limiting factors.

(e) The director may limit the total number of permits which allow a person to rehabilitate wildlife that are issued in certain geographic areas of the state, if in the best interest of the wildlife resource, or if necessary to provide the most efficient management of the permitting process by the division.

(f) The director shall have the authority to promulgate emergency legislative rules and legislative rules pursuant to §29A-3-1 *et seq.* of this code providing for the wildlife rehabilitation application process, application fee, permit eligibility requirements, permit renewal requirements, permit revocation requirements, wildlife housing and facilities requirements, record keeping requirements, and any other provision necessary in implementing and administering this article.

§20-2D-4. Wildlife rehabilitation permits, permit classes, and application requirements.

(a) Any person wishing to conduct wildlife rehabilitation in this state must first make application to the director for a wildlife rehabilitation permit.

(b) No person may be issued a wildlife rehabilitation permit who has previously been convicted of or pleaded guilty to a violation of any Federal, State, or local law or ordinance relating to wildlife, animal welfare, or animal cruelty.

(c) To be eligible for a rehabilitation permit, issued by the Director, the applicant must:

(1) Be at least 18 years of age.

(2) Be a resident of the state of West Virginia.

(3) Have wildlife handling and care training as established by the Director.

(4) Pass a relevant examination relating to biology, care, handling, diet, animal welfare, statutes, rules, and regulations and other such appropriate matters as determined by the Director.

(5) Meet and maintain facility requirements as required by the Director.

(6) Provide written verification that a veterinarian holding an active West Virginia license has agreed to assist and consult with the applicant on the treatment and care of wildlife being rehabilitated and recommends the individual for a wildlife rehabilitation permit. Except, if the applicant is a veterinarian, a copy of their active West Virginia license is required.

(7) Permit holders are required to list on their permit in-facility assistants that assist with daily care and rehabilitation. In-facility assistants must:

(A) Be at least 18 years of age.

(B) Have the appropriate wildlife handling and care training as established by the Director.

§20-2D-5. Permit conditions.

(a) A permit issued under the provisions of this article shall not be transferred to any other person.

(b) A permit issued under the provisions of this article shall be effective for one calendar year from the date of issue.

(c) A permit issued under the provisions of this article shall only be issued to one facility with one specific geographic location.

(d) The Director shall be notified by the permit holder within 24 hours of the occurrence of any unexplained diseases or deaths occurring in wildlife held under this permit.

(e) Permit holders must notify the Director within 24 hours of the escape of wildlife from the facility.

§20-2D-6. General provisions regarding wildlife rehabilitation.

(a) Permit holders or designated in-shelter assistants may have contact with wildlife being rehabilitated only to the extent necessary for adequate care and treatment. Wildlife may not be habituated to humans, tamed, kept as pets, or used in inappropriate ways.

(b) Public exhibition of wildlife being rehabilitated is prohibited.

(c) Permit holders shall notify the director immediately of the receipt of a federally threatened or endangered species.

(d) On advice from the permit holder's consulting veterinarian, an injured or sick wildlife that is incapable of surviving if released to the wild must be:

(1) Humanely euthanized under the direction of the permit holder's consulting veterinarian;

(2) Turned over to the director or his or her designee; or

(3) On approval by the director, may remain with the rehabilitator for educational display.

(e) Euthanasia of wildlife shall be carried out by the most humane means possible under the direction of the permit holder's consulting veterinarian according to criteria established by the

American Veterinary Medical Association, the National Wildlife Rehabilitators Association, or the International Wildlife Rehabilitators Council. Threatened or endangered species may be euthanized only on written approval from the director.

(f) Wildlife that are euthanized or die of natural causes must be buried or incinerated, except migratory birds. Federal permit holders must follow the guidelines of their permits for the final disposition of carcasses.

(g) Permit holders may not sell, barter, or give away any live or dead wildlife or any parts thereof.

(h) The Director or his or her designee shall be able to inspect any wildlife rehabilitation facility at any time for reasons including disease surveillance, collection of treatment records, and wildlife welfare checks.

(i) The Director can require wildlife to be tested, quarantined, and destroyed if they are exposed to or known to possess diseases or parasites of pathological or ecological significance to humans, domestic livestock and poultry, or native wildlife.

§20-2D-7. Prohibited activities by rehabilitation permit holders.

(a) A permit holder may not import or accept wildlife for rehabilitation from outside West Virginia.

(b) A permit holder may not transport wildlife across state lines for any reason.

(c) A permit holder who is not a veterinarian with an active West Virginia veterinary license may not charge a fee for rehabilitating wildlife.

(d) A permit holder may not delegate to others the authority granted in his or her permit except that permit holders may designate others as in-shelter assistants to assist with the care and feeding of wildlife on the premises of the permit holder and under the direct supervision of the permit holder.

(e) A permit holder may not practice veterinary medicine as defined by law unless he or she is actively licensed as a veterinarian in this state.

(f) Permit holders may not transfer the possession of a wildlife to anyone except the Director, a designee of the Director, or another permitted wildlife rehabilitation facility.

§20-2D-8. Revocation of permits.

(a) The director may revoke all or part of a permit when a permit holder has failed to comply with the provisions of this article, when necessary to protect the interests of the public, or to protect the interests of the wildlife under the permit holder's care.

(b) Except in an emergency, a permit holder must be notified in writing of the conditions and nature of a revocation no less than 14 days prior to the effective date of the revocation.

§20-2D-9. Violation of article.

(a) Any person violating any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1000, which is not subject to suspension by the court, confined in jail not less than 10 nor more than 30 days, or both fined and confined.

CHAPTER 191

(Com. Sub. for S. B. 833 - By Senator Chapman)

[Passed April 11, 2025; in effect from passage]

[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §5-16-7f, §9-5-32, §33-15-4s, §33-16-3dd, §33-24-7s, §33-25-8p, and §33-25a-8s of the Code of West Virginia, 1931, as amended, relating to prior authorization; and clarifying that pharmaceutical medication if excluded from the prior authorization gold card process.

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.

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

"Episode of care" means a specific medical problem, condition, or specific illness being managed, including tests, procedures, and rehabilitation initially requested by the health care practitioner, to be performed at the site of service, excluding out-of-network care:

Provided, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

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

"Prior authorization" means obtaining advance approval from the Public Employees Insurance Agency regarding the coverage of a service or medication.

(b) The Public Employees Insurance Agency shall require prior authorization forms, including any related communication, to be submitted via an electronic portal and shall accept one prior authorization for an episode of care. The portal shall be placed in an easily identifiable and accessible place on the Public Employees Insurance Agency's webpage and the portal web address shall be included on the insured's insurance card. The portal shall:

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

(2) Provide an electronic notification to the health care provider confirming receipt of the prior authorization request for forms submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the Public Employees Insurance Agency requires a prior authorization. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list shall be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the Public Employees Insurance Agency requires a plan member to use step therapy protocols. This

shall be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the Public Employees Insurance Agency and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by July 1, 2024.

(c) The Public Employees Insurance Agency shall provide electronic communication via the portal regarding the current status of the prior authorization request to the health care provider.

(d) After the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the Public Employees Insurance Agency shall respond to the prior authorization request within five business days from the day on the electronic receipt of the prior authorization request: *Provided*, That the Public Employees Insurance Agency shall respond to the prior authorization request within two business days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

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

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

(e) If the information submitted is considered incomplete, the Public Employees Insurance Agency shall identify all deficiencies, and within two business days from the day on the electronic receipt of the prior authorization, request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care

practitioner. The Public Employees Insurance Agency shall render a decision within two business day after receipt of the additional information submitted by the health care provider. If the health care practitioner fails to submit additional information, the prior authorization is considered denied and a new request shall be submitted.

(f) If the Public Employees Insurance Agency wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process within two business days from the day on the electronic receipt of the prior authorization request.

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

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

(i) If a prior authorization is rejected by the Public Employees Insurance Agency and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner, similar in specialty, education, and background. The Public Employees Insurance Agency's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this peer-to-peer appeal process shall take no longer than five business days from the date of the request of the peer-to-peer consultation. Time frames regarding the appeal of a decision on a prior authorization shall take no longer than 10 business days from the date of the appeal submission.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization may not be subject to prior authorization requirements and shall be immediately approved for not less than three days: *Provided*, That the cost of the medication

does not exceed \$5,000 per day and the health care practitioner shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization shall be obtained.

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

(k) If a health care practitioner has performed an average of 30 procedures per year and in a six-month time period during that year has received a 90 percent final prior approval rating, the Public Employees Insurance Agency shall not require the health care practitioner to submit a prior authorization for at least the next six months, or longer if the Public Employees Insurance Agency allows: *Provided*, That at the end of the six-month time frame, or longer if the Public Employees Insurance Agency allows, the exemption shall be reviewed prior to renewal. If approved, the renewal shall be granted for a time period equal to the previously granted time period, or longer if the Public Employees Insurance Agency allows. This exemption is subject to internal auditing, at any time, by the Public Employees Insurance Agency and may be rescinded if the Public Employees Insurance Agency determines the health care practitioner is not performing services or procedures in conformity with the Public Employees Insurance Agency's benefit plan, it identifies substantial variances in historical utilization, or identifies other anomalies based upon the results of the Public Employees Insurance Agency's internal audit. The Public Employees Insurance Agency shall provide a health care practitioner with a letter detailing the rationale for revocation of his or her exemption. Nothing in this subsection may be interpreted to prohibit the Public Employees Insurance Agency from requiring a prior authorization for an experimental treatment, non-covered benefit, pharmaceutical medication, or any out-of-network service or procedure.

(l) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2024. This section applies to all policies, contracts, plans, or agreements, subject to

this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(m) The Insurance Commissioner shall request data on a quarterly basis, or more often as needed, to oversee compliance with this article. The data shall include, but not be limited to, prior authorizations requested by health care providers, the total number of prior authorizations denied broken down by health care provider, the total number of prior authorizations appealed by health care providers, the total number of prior authorizations approved after appeal by health care providers, the name of each gold card status physician, and the name of each physician whose gold card status was revoked and the reason for revocation.

(n) The Insurance Commissioner may assess a civil penalty for a violation of this section.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-32. Prior authorization.

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

"Episode of care" means a specific medical problem, condition, or specific illness being managed, including tests, procedures, and rehabilitation initially requested by the health care practitioner, to be performed at the site of service, excluding out-of-network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

"National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard" means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be used provided that the new version is backward

compatible with the current version approved by the United States Department of Health and Human Services;

"Prior authorization" means obtaining advance approval from the Bureau for Medical Services about the coverage of a service or medication.

(b) The Bureau for Medical Services shall require prior authorization forms, including any related communication, to be submitted via an electronic portal and shall accept one prior authorization for an episode of care. The portal shall be placed in an easily identifiable and accessible place on the Bureau for Medical Services' webpage and the portal web address shall be included on the insured's insurance card. The portal shall:

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

(2) Provide an electronic notification to the health care provider confirming receipt of the prior authorization request for forms submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the Bureau of Medical Services requires a prior authorization. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list shall be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the Bureau for Medical Services requires a plan member to use step therapy protocols. This shall be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the Bureau for Medical Services and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by July 1, 2024.

(c) Provide electronic communication via the portal regarding the current status of the prior authorization request to the health care provider.

(d) After the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the Bureau of Medical Services shall respond to the prior authorization request within five business days from the day on the electronic receipt of the prior authorization request, except that the Bureau of Medical Services shall respond to the prior authorization request within two business days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

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

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

(e) If the information submitted is considered incomplete, the Bureau for Medical Services shall identify all deficiencies, and within two business days from the day on the electronic receipt of the prior authorization request, return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner. The Bureau for Medical Services shall render a decision within two business days after receipt of the additional information submitted by the health care provider. If the health care practitioner fails to submit additional information, the prior authorization is considered denied and a new request shall be submitted.

(f) If the Bureau for Medical Services wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer

review process within two business days from the day on the electronic receipt of the prior authorization request.

(g) A prior authorization approved by the Bureau for Medical Services is carried over to all other managed care organizations and health insurers for three months if the services are provided within the state.

(h) The Bureau for Medical Services shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the Bureau for Medical Services and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner, similar in specialty, education, and background. The Bureau for Medical Services' medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this peer-to-peer appeal process shall take no longer than five business days from the date of the request of the peer-to-peer consultation. Time frames regarding the appeal of a decision on a prior authorization shall take no longer than 10 business days from the date of the appeal submission.

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

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

(k) If a health care practitioner has performed an average of 30 procedures per year and in a six-month time period during that year has received a 90 percent final prior approval rating, the Bureau for Medical Services may not require the health care practitioner to submit a prior authorization for at least the next six months or longer if the Bureau for Medical Services allows: *Provided*, That at the end of the six-month time frame, or longer if the Bureau for Medical Services allows, the exemption shall be reviewed prior to renewal. If approved, the renewal shall be granted for a time period equal to the previously granted time period, or longer if the Bureau for Medical Services allows. This exemption is subject to internal auditing at any time by the Bureau for Medical Services and may be rescinded if the Bureau for Medical Services determines the health care practitioner is not performing services or procedures in conformity with the Bureau for Medical Services' benefit plan, it identifies substantial variances in historical utilization or identifies other anomalies based upon the results of the Bureau for Medical Services' internal audit. The Bureau for Medical Services shall provide a health care practitioner with a letter detailing the rationale for revocation of his or her exemption. Nothing in this subsection may be interpreted to prohibit the Bureau for Medical Services from requiring a prior authorization for an experimental treatment, non-covered benefit, pharmaceutical medication, or any out-of-network service or procedure.

(l) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2024. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(m) The Inspector General shall request data on a quarterly basis, or more often as needed, to oversee compliance with this article. The data shall include, but not be limited to, prior authorizations requested by health care providers, the total number of prior authorizations denied broken down by health care provider, the total number of prior authorizations appealed by health care providers, the total number of prior authorizations approved after appeal by health care providers, the name of each gold card status

physician, and the name of each physician whose gold card status was revoked and the reason for revocation.

(n) The Inspector General may assess a civil penalty for a violation of this section.

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4s. Prior authorization.

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

"Episode of care" means a specific medical problem, condition, or specific illness being managed including tests, procedures, and rehabilitation initially requested by the health care practitioner, to be performed at the site of service, excluding out-of-network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

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

"Prior authorization" means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b) The health insurer shall require prior authorization forms, including any related communication, to be submitted via an electronic portal and shall accept one prior authorization for an episode of care. The portal shall be placed in an easily identifiable and accessible place on the health insurer's webpage and the portal

web address shall be included on the insured's insurance card. The portal shall:

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

(2) Provide an electronic notification to the health care provider confirming receipt of the prior authorization request for forms submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the health insurer requires a prior authorization. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list shall be updated at least quarterly to ensure that the list remains current;

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

(5) Be prepared by July 1, 2024.

(c) Provide electronic communication via the portal regarding the current status of the prior authorization request to the health care provider.

(d) After the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within five business days from the day on the electronic receipt of the prior authorization request, except that the health insurer shall respond to the prior authorization request within two business days if the request is for medical care or other service for a condition where application of the time frame for

making routine or non-life-threatening care determinations is either of the following:

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

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

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies, and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the time the return request is received by the health care practitioner. The health insurer shall render a decision within two business days after receipt of the additional information submitted by the health care provider. If the health care provider fails to submit additional information, the prior authorization is considered denied and a new request shall be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process within two business days from the day on the electronic receipt of the prior authorization request.

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

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

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer

review shall be with a health care practitioner, similar in specialty, education, and background. The health insurer's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this peer-to-peer appeal process shall take no longer than five business days from the date of the request of the peer-to-peer consultation. Time frames regarding the appeal of a decision on a prior authorization shall take no longer than 10 business days from the date of the appeal submission.

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

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

(k) If a health care practitioner has performed an average of 30 procedures per year and in a six-month time period during that year has received a 90 percent final prior approval rating, the health insurer may not require the health care practitioner to submit a prior authorization for at least the next six months, or longer if the insurer allows: *Provided*, That at the end of the six-month time frame, or longer if the insurer allows, the exemption shall be reviewed prior to renewal. If approved, the renewal shall be granted for a time period equal to the previously granted time period, or longer if the insurer allows. This exemption is subject to internal auditing, at any time, by the health insurer and may be rescinded if the health insurer determines the health care practitioner is not performing services or procedures in conformity with the health insurer's benefit plan, it identifies substantial variances in historical utilization, or identifies other anomalies based upon the results of the health insurer's internal audit. The insurer shall provide a health

care practitioner with a letter detailing the rationale for revocation of his or her exemption. Nothing in this subsection may be interpreted to prohibit an insurer from requiring a prior authorization for an experimental treatment, non-covered benefit, pharmaceutical medication, or any out-of-network service or procedure.

(l) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2024. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(m) The Insurance Commissioner shall request data on a quarterly basis, or more often as needed, to oversee compliance with this article. The data shall include, but not be limited to, prior authorizations requested by health care providers, the total number of prior authorizations denied broken down by health care provider, the total number of prior authorizations appealed by health care providers, the total number of prior authorizations approved after appeal by health care providers, the name of each gold card status physician, and the name of each physician whose gold card status was revoked and the reason for revocation.

(n) The Insurance Commissioner may assess a civil penalty for a violation of this section pursuant to §33-3-11 of this code.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3dd. Prior authorization.

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

"Episode of care" means a specific medical problem, condition, or specific illness being managed including tests, procedures, and rehabilitation initially requested by the health care practitioner to be performed at the site of service, excluding out-of-network care: *Provided*, That any additional testing or procedures related or

unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

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

"Prior authorization" means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b) The health insurer shall require prior authorization forms, including any related communication, to be submitted via an electronic portal and shall accept one prior authorization for an episode of care. The portal shall be placed in an easily identifiable and accessible place on the health insurer's webpage and the portal web address shall be included on the insured's insurance card. The portal shall:

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

(2) Provide an electronic notification to the health care provider confirming receipt of the prior authorization request for forms submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the health insurer requires a prior authorization. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list shall be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the health insurer requires a plan member to use step therapy protocols. This shall be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the health insurer and the step therapy has

been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by July 1, 2024.

(c) Provide electronic communication via the portal regarding the current status of the prior authorization request to the health care provider.

(d) After the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within five business days from the day on the electronic receipt of the prior authorization request: *Provided*, That the health insurer shall respond to the prior authorization request within two business days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

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

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

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies, and within two business days from the day on the electronic receipt of the prior authorization request, return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the time the return request is received by the health care practitioner. The health insurer shall render a decision within two business days after receipt of the additional information submitted by the health care provider. If the health care provider fails to

submit additional information, the prior authorization is considered denied and a new request shall be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process within two business days from the day on the electronic receipt of the prior authorization request.

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

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

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner, similar in specialty, education, and background. The health insurer's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this peer-to-peer appeal process shall take no longer than five business days from the date of request of the peer-to-peer consultation. Time frames regarding the appeal of a decision on a prior authorization shall take no longer than 10 business days from the date of the appeal submission.

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

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

(k) If a health care practitioner has performed an average of 30 procedures per year and in a six-month time period during that year has received a 90 percent final prior approval rating, the health insurer may not require the health care practitioner to submit a prior authorization for at least the next six months, or longer if the insurer allows: *Provided*, That, at the end of the six-month time frame, or longer if the insurer allows, the exemption shall be reviewed prior to renewal. If approved, the renewal shall be granted for a time period equal to the previously granted time period, or longer if the insurer allows. This exemption is subject to internal auditing by the health insurer at any time and may be rescinded if the health insurer determines the health care practitioner is not performing services or procedures in conformity with the health insurer's benefit plan, it identifies substantial variances in historical utilization, or identifies or anomalies based upon the results of the health insurer's internal audit. The insurer shall provide a health care practitioner with a letter detailing the rationale for revocation of his or her exemption. Nothing in this subsection may be interpreted to prohibit an insurer from requiring a prior authorization for an experimental treatment, non-covered benefit, pharmaceutical medication, or any out-of-network service or procedure.

(l) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2024. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(m) The Insurance Commissioner shall request data on a quarterly basis, or more often as needed, to oversee compliance with this article. The data shall include, but not be limited to, prior authorizations requested by health care providers, the total number of prior authorizations denied broken down by health care provider, the total number of prior authorizations appealed by health care providers, the total number of prior authorizations approved after

appeal by health care providers, the name of each gold card status physician, and the name of each physician whose gold card status was revoked and the reason for revocation.

(n) The Insurance Commissioner may assess a civil penalty for a violation of this section pursuant to §33-3-11 of this code.

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

§33-24-7s. Prior authorization.

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

"Episode of care" means a specific medical problem, condition, or specific illness being managed including tests, procedures, and rehabilitation initially requested by the health care practitioner to be performed at the site of service, excluding out-of-network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

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

"Prior authorization" means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b) The health insurer shall require prior authorization forms, including any related communication, to be submitted via an electronic portal and shall accept one prior authorization for an episode of care. The portal shall be placed in an easily identifiable

and accessible place on the health insurer's webpage and the portal web address shall be included on the insured's insurance card. The portal shall:

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

(2) Provide an electronic notification to the health care provider confirming receipt of the prior authorization request for forms submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the health insurer requires a prior authorization. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list shall be updated at least quarterly to ensure that the list remains current;

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

(5) Be prepared by, July 1, 2024.

(c) Provide electronic communication via the portal regarding the current status of the prior authorization request to the health care provider.

(d) After the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within five business days from the day on the electronic receipt of the prior authorization request: *Provided*, That the health insurer shall respond to the prior authorization request within two business days if the request is for medical care or other service for a condition where application of the time frame for

making routine or non-life-threatening care determinations is either of the following:

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

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

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies, and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner. The health insurer shall render a decision within two business days after receipt of the additional information submitted by the health care provider. If the health care provider fails to submit additional information, the prior authorization is considered denied and a new request shall be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process within two business days from the day on the electronic receipt of the prior authorization request.

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

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

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer

review shall be with a health care practitioner, similar in specialty, education, and background. The health insurer's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this peer-to-peer appeal process shall take no longer than five business days from the date of the request of the peer-to-peer consultation. Time frames regarding the appeal of a decision on a prior authorization shall take no longer than 10 business days from the date of the appeal submission.

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

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

(k) If a health care practitioner has performed an average of 30 procedures per year and in a six-month time period during that year has received a 90 percent final prior approval rating, the health insurer may not require the health care practitioner to submit a prior authorization for at least the next six months, or longer if the insurer allows: *Provided*, That, at the end of the six-month time frame, or longer if the insurer allows, the exemption shall be reviewed prior to renewal. If approved, this renewal, shall be granted for a time period equal to the previously granted time period, or longer if the insurer allows. This exemption is subject to internal auditing, at any time, by the health insurer and may be rescinded if the health insurer determines the health care practitioner is not performing services or procedures in conformity with the health insurer's benefit plan, it identifies substantial variances in historical utilization or identifies other anomalies based upon the results of the health insurer's internal audit. The

insurer shall provide a health care practitioner with a letter detailing the rationale for revocation of his or her exemption. Nothing in this subsection may be interpreted to prohibit an insurer from requiring a prior authorization for an experimental treatment, non-covered benefit, pharmaceutical medication, or any out-of-network service or procedure.

(l) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2024. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(m) The Insurance Commissioner shall request data on a quarterly basis, or more often as needed, to oversee compliance with this article. The data shall include, but not be limited to, prior authorizations requested by health care providers, the total number of prior authorizations denied broken down by health care provider, the total number of prior authorizations appealed by health care providers, the total number of prior authorizations approved after appeal by health care providers, the name of each gold card status physician, the name of each physician whose gold card status was revoked and the reason for revocation.

(n) The Insurance Commissioner may assess a civil penalty for a violation of this section pursuant to §33-3-11 of this code.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8p. Prior authorization.

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

"Episode of care" means a specific medical problem, condition, or specific illness being managed including tests, procedures, and rehabilitation initially requested by the health care practitioner, to be performed at the site of service, excluding out-of-network care: *Provided*, That any additional testing or procedures related or

unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

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

"Prior authorization" means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b) The health insurer shall require prior authorization forms, including any related communication, to be submitted via an electronic portal and shall accept one prior authorization for an episode of care. These forms shall be placed in an easily identifiable and accessible place on the health insurer's webpage and the portal web address shall be included on the insured's insurance card. The portal shall:

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

(2) Provide an electronic notification to the health care provider confirming receipt of the prior authorization request for forms submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the health insurer requires a prior authorization. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list shall be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the health insurer requires a plan member to use step therapy protocols. This shall be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the health insurer and the step therapy has

been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by July 1, 2024.

(c) Provide electronic communication via the portal regarding the current status of the prior authorization request to the health care provider.

(d) After the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within five business days from the day on the electronic receipt of the prior authorization request: *Provided*, That the health insurer shall respond to the prior authorization request within two business days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

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

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

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies, and within two business days from the day on the electronic receipt of the prior authorization request, return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner. The health insurer shall render a decision within two business days after receipt of the additional information submitted by the health care provider. If the health care provider fails to submit additional

information the prior authorization is considered denied and a new request shall be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process within two business days from the day on the electronic receipt of the prior authorization request.

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

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

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner, similar in specialty, education, and background. The health insurer's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this peer-to-peer appeal process shall take no longer than five business days from the date of the request of the peer-to-peer consultation. Time frames regarding the appeal of a decision on a prior authorization shall take no longer than 10 business days from the date of the appeal submission.

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

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

(k) If a health care practitioner has performed an average of 30 procedures per year and in a six-month time period during that year has received a 90 percent final prior approval rating, the health insurer may not require the health care practitioner to submit a prior authorization for at least the next six months, or longer if the insurer allows: *Provided*, That, at the end of the six-month time frame, or longer if the insurer allows, the exemption shall be reviewed prior to renewal. If approved, the renewal shall be granted for a time period equal to the previously granted time period, or longer is the insurer allows. This exemption is subject to internal auditing, at any time, by the health insurer and may be rescinded if the health insurer determines the health care practitioner is not performing services or procedures in conformity with the health insurer's benefit plan, it identifies substantial variance in historical utilization, or other anomalies based upon the results of the health insurer's internal audit. The insurer shall provide a health care practitioner with a letter detailing the rationale for revocation of his or her exemption. Nothing in this subsection may be interpreted to prohibit an insurer from requiring a prior authorization for an experimental treatment, non-covered benefit, pharmaceutical medication, or any out-of-network service or procedure.

(l) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2024. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(m) The Insurance Commissioner shall request data on a quarterly basis, or more often as needed, to oversee compliance with this article. The data shall include, but not be limited to, prior authorizations requested by health care providers, the total number of prior authorizations denied broken down by health care provider, the total number of prior authorizations appealed by health care providers, the total number of prior authorizations approved after appeal by health care providers, the name of each gold card status

physician, the name of each physician whose gold card status was revoked and the reason for revocation.

(n) The Insurance Commissioner may assess a civil penalty for a violation of this section pursuant to §33-3-11 of this code.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8s. Prior authorization.

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

"Episode of care" means a specific medical problem, condition, or specific illness being managed including tests, procedures, and rehabilitation initially requested by the health care practitioner, to be performed at the site of service, excluding out-of-network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

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

"Prior authorization" means obtaining advance approval from a health maintenance organization about the coverage of a service or medication.

(b) The health maintenance organization shall require prior authorization forms, including any related communication, to be submitted via an electronic portal and shall accept one prior authorization for an episode of care. These forms shall be placed in an easily identifiable and accessible place on the health

maintenance organization's webpage and the portal web address shall be included on the insured's insurance card. The portal shall:

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

(2) Provide an electronic notification to the health care provider confirming receipt of the prior authorization request for forms submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the health maintenance organization requires a prior authorization. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list shall be updated at least quarterly to ensure that the list remains current;

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

(5) Be prepared by July 1, 2024.

(c) Provide electronic communication via the portal regarding the current status of the prior authorization request to the health care provider.

(d) After the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health maintenance organization shall respond to the prior authorization request within five business days from the day on the electronic receipt of the prior authorization request, except that the health maintenance organization shall respond to the prior authorization request within two business days if the request is for medical care or other service for a condition

where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

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

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

(e) If the information submitted is considered incomplete, the health maintenance organization shall identify all deficiencies, and within two business days from the day on the electronic receipt of the prior authorization request, return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner. The health insurer shall render a decision within two business days after receipt of the additional information submitted by the health care provider. If the health care provider fails to submit the additional information, the prior authorization is considered denied and a new request shall be submitted.

(f) If the health maintenance organization wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process within two business days from the day on the electronic receipt of the prior authorization request.

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

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

(i) If a prior authorization is rejected by the health maintenance organization and the health care practitioner who submitted the

prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner, similar in specialty, education, and background. The health maintenance organization's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this peer-to-peer appeal process shall take no longer than five business days from the date of the request of the peer-to-peer consultation. Time frames regarding the appeal of a decision on a prior authorization shall take no longer than 10 business days from the date of the appeal submission.

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

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

(k) If a health care practitioner has performed an average of 30 procedures per year and in a six-month time period during that year has received a 90 percent final prior approval rating, the health maintenance organization may not require the health care practitioner to submit a prior authorization for at least the next six months or longer if the insurer allows: *Provided*, That at the end of the six-month time frame, or longer if the insurer allows, the exemption shall be reviewed prior to renewal. If approved, the renewal shall be granted for a time period equal to the previously granted time period, or longer if the insurer allows. This exemption is subject to internal auditing, at any time, by the health maintenance organization and may be rescinded if the health maintenance organization determines the health care practitioner is not performing services or procedures in conformity with the

health maintenance organization's benefit plan, it identifies substantial variances in historical utilization, or identifies other anomalies based upon the results of the health maintenance organization's internal audit. The insurer shall provide a health care practitioner with a letter detailing the rationale for revocation of his or her exemption. Nothing in this subsection may be interpreted to prohibit an insurer from requiring prior authorization for an experimental treatment, non-covered benefit, or any out-of-network service or procedure. This subsection shall not apply to pharmaceutical medications or services or procedures where the benefit maximums or minimums have been required by statute or policy of the Bureau for Medical Services as it relates to the Medicaid Program.

(l) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2024. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(m) The Insurance Commissioner shall request data on a quarterly basis, or more often as needed, to oversee compliance with this article. The data shall include, but not be limited to, prior authorizations requested by health care providers, the total number of prior authorizations denied broken down by health care provider, the total number of prior authorizations appealed by health care providers, the total number of prior authorizations approved after appeal by health care providers, the name of each gold card status physician, the name of each physician whose gold card status was revoked and the reason for revocation.

(n) The Insurance Commissioner may assess a civil penalty for a violation of this section pursuant to §33-3-11 of this code.

CHAPTER 192

(S. B. 291 - By Senators Chapman and Deeds)

[Passed March 14, 2025;
in effect 90 days from passage (June 12, 2025)]
[Approved by the Governor on March 24, 2025.]

AN ACT to amend and reenact §30-5-22 of the Code of West Virginia, 1931, as amended, relating to registration of pharmacies; and extending time frame for pharmacies to register from annually to biennially.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-22. Pharmacies to be registered.

(a) A pharmacy, an ambulatory health care facility, and a charitable clinic pharmacy shall register with the board.

(b) A person desiring to operate, maintain, open, or establish a pharmacy shall register with the board.

(c) To be eligible for a registration to operate, maintain, open, or establish a pharmacy the applicant shall:

- (1) Submit a written application to the board;
- (2) Pay all applicable fees;
- (3) Designate a pharmacist-in-charge; and
- (4) Successfully complete an inspection by the board.

(d) A separate application shall be made and separate registration issued for each location.

(e) Registration is not transferable.

(f) Registration expires and shall be renewed biennially.

(g) If a registration expires, the pharmacy shall be reinspected and an inspection fee is required.

(h) A registrant shall employ a pharmacist-in-charge and operate in compliance with the legislative rules governing the practice of pharmacist care and the operation of a pharmacy.

(i) The provisions of this section do not apply to the sale of nonprescription drugs which are not required to be dispensed pursuant to a practitioner's prescription.

(j) The provisions of this section do not apply to the sale or distribution of dialysate, drugs, or devices necessary to perform home peritoneal renal dialysis to patients with end state renal disease, provided the requirements of §30-5-29 of this code are met.

CHAPTER 193

(Com. Sub. for S. B. 427 - By Senators Phillips and Deeds)

[Passed April 12, 2025; in effect 90 days from passage]
[Approved by the Governor on April 24, 2025.]

AN ACT to amend and reenact §21-6-3, §21-6-5, and §21-6-10 of the Code of West Virginia, 1931, as amended; and to repeal §21-6-4 and §21-6-8a, relating to eliminating requirement that 14- and 15-year-olds obtain a work permit as condition of employment; requiring employers to obtain parental or other consent and age certificate prior to employing 14- or 15-year-olds; authorizing State Commissioner of Labor to issue age certificates for children aged 14 and over; setting requirements for age certificate contents; and providing penalties for a person that illegally issues an age certificate.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CHILD LABOR.

§21-6-3. Parental consent for employment of children under 16.

A child 14 or 15 years of age may be employed or permitted to work in any gainful occupation, except as provided in §21-6-2 of this code, when the person, firm, or corporation by whom the child is employed or permitted to work, obtains and keeps on file and accessible to officers charged with the enforcement of this article, the written consent of the parent or parents, guardian, or custodian of the child.

§21-6-4. Contents of work permit; forms; filing; records; revocation.

[Repealed.]

§21-6-5. Age certificate for employers; contents of certificate; forms; records; filing; inquiry as to age; revocation of certificate.

(a) A child 14 or 15 years of age may be employed or permitted to work in any gainful occupation, except as provided in §21-6-2 of this code, when the person, firm, or corporation by whom the child is employed or permitted to work, obtains and keeps on file and accessible to officers charged with the enforcement of this article, an age certificate issued by the State Commissioner of Labor or a person authorized by him or her in writing. Upon request of any employer who is desirous of employing a child who represents his or her age to be 16 years or over, the commissioner or a person authorized by him or her in writing shall issue to the employer an age certificate in accordance with the provisions of this article.

(b) The commissioner, or a person authorized by him or her in writing to issue an age certificate under this article, shall issue the certificate only upon obtaining proof of age of the child in the form of a birth certificate, or attested transcript thereof, issued by the registrar of vital statistics or other officer charged with the duty of recording births. The age certificate shall set forth the full name and the date and place of birth of the child, with the name and address of his or her parents or parent, or guardian or custodian. It shall certify that the child has submitted for review proof of age, school attendance, prospective employment, brief description of job supplied by the employer, parental or other consent for children under 16 years of age as required by §21-6-3 of this code, and applicable work hours for children under 16 years of age as provided for in §21-6-7 of this code, with such work hours to be printed on the age certificate.

(c) The commissioner shall prepare printed forms for age certificates and make them available by posting on the Division of Labor's website or other method determined pursuant to rule. A record of all age certificates issued shall be kept in the office of the commissioner.

(d) The age certificate, when filed in the office of the employer, must be accepted by an officer charged with the enforcement of this article as evidence of the age of the child in whose name it was issued.

(e) Any officer charged with the enforcement of this article may inquire into the true age of a child apparently under the age of 16 years who is employed or permitted to work in any gainful occupation and for whom no age certificate is on file; and if the age of the child is found to be actually under 16 years, the employment of the child shall be considered a violation of the provisions of this article.

(f) The commissioner may at any time revoke any age certificate if in his or her judgment it was improperly issued, and for this purpose he or she is authorized to investigate the true age of any child employed, to hear evidence, and to require the production of relevant books and documents. If an age certificate is revoked, the issuing officer shall be notified of the action.

§21-6-8a. Blanket work permits.

[Repealed.]

§21-6-10. Offenses; penalties.

Any person who violates a provision of this article, or any parent, guardian, or custodian of a child who permits the child to work in violation of the provisions of this article, or any other person who illegally issues an age certificate, or any person who furnishes false evidence in reference to the age, birthplace, job description, consent, or educational qualifications of a child under this article, shall be guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined not less than \$50 nor more than \$200. A person convicted of a second or subsequent offense shall be fined not less than \$200 nor more than \$1,000 or confined in the county or regional jail for not more than six months, or both fined and confined.

CHAPTER 194

**(Com. Sub. for S. B. 458 - By Senators Smith (Mr. President)
and Woelfel)**

(By Request of the Executive)

[Passed April 2, 2025; in effect 90 days from passage (July 1, 2025)]
[Approved by the Governor on April 7, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding a new section, designated §30-1-27, relating to the establishment of universal professional and occupational licensing, registration, and certification.

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.**

**§30-1-27. Universal Professional and Occupational Licensing
Act of 2025.**

(a) Notwithstanding any other provision of this code to the contrary, every board of examination or registration in this chapter shall issue an occupational or professional license, registration, or certificate without examination in the discipline applied for and at the same practice level as determined by the board of examination or registration, to a person who either:

(1) Establishes residence in this state; or

(2) Is married to an active-duty member of the armed forces of the United States and has accompanied the member to an official permanent change of station to a military installation located in this state.

(b) To qualify for a license under this section, a person listed in subdivision (1) or (2), subsection (a) of this section must apply to a board of examination or registration in this chapter for a license in a particular discipline and meet all of the following criteria:

(1) The person is currently licensed, registered, or certified in at least one other state in the discipline applied for and at the same practice level as determined by the board of examination or registration in this chapter;

(2) The person's license, registration, or certification is in good standing in all states in which the person holds a license, registration, or certification;

(3) The person has been licensed, registered, or certified by another state: *Provided*, That for professions regulated by §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code, the person has been licensed to practice medicine, podiatric medicine, or osteopathic medicine without clinical supervision after successfully completing a graduate medical education program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the Council on Podiatric Medical Education or Colleges of Podiatric Medicine: *Provided further*, That for professions regulated by §30-4-1 *et seq.* of this code, the person shall have completed a clinical hand-skills exam;

(4) The person was licensed, registered, or certified by another state where there were minimum education requirements and, if applicable, work experience and clinical supervision requirements in effect and the other state verifies that the person met those requirements in order to be licensed, registered, or certified in that state;

(5) The person previously passed any examinations, written or clinical, required for the license, registration, or certification if required by the other state;

(6) The person has not had a license, registration, or certificate revoked or has not voluntarily surrendered a license, registration,

or certificate in any other state or country while under investigation for unprofessional conduct;

(7) The person has not had any other form of discipline imposed by any other regulating entity: *Provided*, That if another state's regulating entity has taken disciplinary action against the person, a board of examination or registration in this state may issue the person a license, registration, or certificate if it determines the cause of action in the other state was corrected and the matter fully resolved. If the matter has not been resolved in the other state, the board of examination or registration in this state may not issue or deny a license until the matter is resolved;

(8) The person pays all applicable fees in this state; and

(9) The person does not have a disqualifying criminal history as determined by the board of examination or registration in this state.

(c) This section does not prevent a board of examination or registration in this chapter from entering into a reciprocity agreement with another state or jurisdiction for persons married to active duty members of the armed forces of the United States, except that the agreement may not allow out-of-state licensees or certificate holders to obtain a license or certificate by reciprocity in this state if the applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the regulating entity on a case-by-case basis.

(d) Notwithstanding subsection (a) of this section, a board of examination or registration in this chapter that administers an examination on laws of this state as part of its license, registration, or certificate process may require a person who applies for a license, registration, or certification under this section to take and pass an examination specific to the laws of this state.

(e) A person who is licensed pursuant to this section is subject to the laws regulating the person's practice in this state and is subject to the jurisdiction of the board of examination or registration who issued the license, registration, or certification under this section.

(f) This section does not apply to:

(1) Any license authorizing a person to practice law in this state;

(2) Any state board of examination or registration that is subject to direct oversight by a federal agency and has requirements for licensure or certification that are less restrictive than those outlined in this section; or

(3) Any requirement for a state or national criminal history record check that a board may require pursuant to any provision of this chapter.

(g) A license or certificate issued pursuant to this section is valid only in this state and does not grant the person compact privilege under an interstate compact. A board of examination or registration in this chapter may determine eligibility for a person to be licensed or certified under this section if the person is not part of an interstate compact.

(h) All boards of examination or registration in this chapter shall prominently print the following notice on all license, registration, and certificate applications and websites:

Pursuant to W. Va. Code §30-1-27, a person shall be granted an occupational or professional license, registration, or certificate if the person has been licensed or certified in another state, the license, registration, or certificate is in the same discipline and at the same practice level as the license, registration, or certificate for which the person is applying in this state and the person meets other conditions prescribed by W. Va. Code §30-1-27.

(i) Beginning July 1, 2025, all boards of examination or registration that are required to issue occupational or professional licenses, registrations, or certificates pursuant to this section shall track information about applications received and submit and report that information to the Secretary of the Department of Commerce and the Senate and House Committees on Government Organization on or before the fifteenth day following the end of each quarter.

CHAPTER 195

(Com. Sub. for S. B. 462 - By Senator Takubo)

[Passed March 13, 2025; in effect from passage]
[Approved by the Governor on March 24, 2025.]

AN ACT to amend and reenact §30-28-3 of the Code of West Virginia, 1931, as amended; to amend the code by adding a new section, designated §30-28-4a; and to repeal §30-28-15, relating to the Board of Occupational Therapy; defining terms; permitting the Board of Occupational Therapy to require criminal history record checks; requiring rulemaking; and repealing code related to special volunteer licenses and immunity.

Be it enacted by the Legislature of West Virginia:

ARTICLE 28. WEST VIRGINIA OCCUPATIONAL THERAPY PRACTICE ACT.

§30-28-3. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

"Association" means the West Virginia Occupational Therapy Association.

"Board" means the West Virginia Board of Occupational Therapy.

"Business entity" means any firm, partnership, association, company, corporation, limited partnership, limited liability company, or other entity doing business in the State of West Virginia.

"Client-related tasks" means tasks which are related to treatment and which, when performed by an occupational therapy aide, must be performed under direct supervision, including routine transfers, routine care of a patient's personal needs during the course of treatment, execution of an established routine activity or exercise, and assisting the supervising occupational therapist or occupational therapy assistant as directed during the course of treatment.

"Compact privilege" means the authorization, which is equivalent to a license, granted by a remote state to allow a licensee from another member state to practice as an occupational therapist or practice as an occupational therapy assistant in the remote state under its laws and rules. The practice of occupational therapy occurs in the member state where the patient or client is located at the time of the patient or client encounter.

"Direct supervision" means the actual physical presence of a licensed supervising occupational therapist or licensed occupational therapy assistant, and the specific delineation of tasks and responsibilities for personally reviewing and interpreting the results of any habilitative or rehabilitative procedures conducted by the limited permit holder, occupational therapy student, or aide. Direct supervision includes direct close supervision and direct continuous supervision.

"Direct close supervision" means the licensed supervising occupational therapist or licensed occupational therapy assistant is in the building and has daily direct contact at the site of work.

"Direct continuous supervision" means the licensed supervising occupational therapist or licensed occupational therapy assistant is physically present and in direct line of sight of the occupational therapy student or aide.

"General supervision" means initial direction and periodic inspection of the activities of a licensed occupational therapist assistant by the supervising licensed occupational therapist, but does not necessarily require constant physical presence on the premises while the activities are performed.

"License" means a valid and current license issued by the board under the provisions of this article.

"Nonclient-related tasks" means tasks which are not related to treatment and do not require independent clinical reasoning, including clerical and maintenance activities, housekeeping, preparation of the work area or equipment, transporting patients, and ordering supplies, and which, when performed by an occupational therapy aide, must be performed under general supervision.

"Occupational therapist" means a person licensed by the board under the provisions of this article to engage in the practice of occupational therapy.

"Occupational therapy assistant" means a person licensed by the board under the provisions of this article to assist in the practice of occupational therapy under the general supervision of an occupational therapist.

"Occupational therapy aide" means a person who may provide nonclient-related tasks under general supervision, or specifically delegated client-related tasks, subject to the conditions set forth in subsection (f), section four of this article, under direct supervision of an occupational therapist or an occupational therapy assistant, in accordance with the provisions of this article.

"The practice of occupational therapy" means the therapeutic use of everyday life activities or occupations to address the physical, cognitive, psychosocial, sensory, and other aspects of performance of individuals or groups of individuals, including those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation or participation restriction, to promote health, wellness and participation in roles and situations in home, school, workplace, community, and other settings.

§30-28-4a. West Virginia Board of Occupational Therapy criminal history record checks.

(a) The West Virginia Board of Occupational Therapy is authorized to require state and national criminal history record

checks for the purpose of issuing compact privileges. The West Virginia Board of Occupational Therapy shall require an applicant, including occupational therapists and occupational therapy assistants, as a condition of eligibility for compact privilege, to submit to a state and national criminal history record check as set forth in this section.

(b) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(1) Submitting fingerprints for the purposes set forth in this subsection; and

(2) Authorizing the board, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a compact privilege.

(c) The results of the state and national criminal history record check may not be released to or by a private entity except:

(1) To the individual who is the subject of the criminal history record check;

(2) With the written authorization of the individual who is the subject of the criminal history record check; or

(3) Pursuant to a court order.

(d) The criminal history record check and related records are not public records for the purposes of §29B-1-1 *et seq.* of this code.

(e) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

(f) The board may propose rules or amendments to existing rules for legislative approval to comply with the provisions of this section. These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 *et seq.* of this code within

the applicable time limit to be considered by the Legislature during its regular session in the year 2026.

§30-28-15. Special volunteer occupational therapist license; civil immunity for voluntary services rendered to indigents.

[Repealed].

CHAPTER 196

(S. B. 496 - By Senators Thorne and Rucker)

[Passed April 10, 2025; in effect 90 days from passage (July 9, 2025)]
[Approved by the Governor on April 24, 2025.]

AN ACT to amend and reenact §30-37-2 of the Code of West Virginia, 1931, as amended, relating to massage therapists; and clarifying the definition of “massage therapy”.

Be it enacted by the Legislature of West Virginia:

ARTICLE 37. MASSAGE THERAPISTS.

§30-37-2. Definitions.

(a) "Board" means the West Virginia Massage Therapy Licensure Board.

(b) "Massage therapist" means a person licensed to practice the health care service of massage therapy under this article who practices or administers massage therapy to a client of either gender for compensation. No person licensed by the massage therapy licensure board may be referred to as a primary care provider nor be permitted to use such designation.

(c) "Massage therapy" means a health care service which is a scientific and skillful manipulation of soft tissue for therapeutic or remedial purposes, specifically for improving muscle tone, circulation, promoting health and physical well-being. Massage therapy includes massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including hydrotherapy, superficial hot and cold applications, vibration and topical applications or other therapies which involve manipulation of the muscle and connective tissue of the body, for the purpose of

enhancing health, reducing stress, improving circulation, aiding muscle relaxation, increasing range of motion, or relieving neuromuscular pain. Massage therapy does not include diagnosis or service which requires a license to practice medicine or surgery, osteopathic medicine, chiropractic, or podiatry, and does not include service performed by nurses, occupational therapists, physical therapists, or reflexologists who act under their own professional license, certificate, or registration, or energy work practitioners (including reiki, qigong, and sound healing).

(d) "Massage establishment" means a place of business wherein massage therapy is practiced, with a physical site or premise, including mobile sites, licensed as required by this article, in which licensed massage therapists are employees or contractors practicing massage therapy on clients.

(e) "Sole practitioner" means a licensed massage therapist who is licensed pursuant to this article, who is not an employee or contractor of the sole practitioner or an establishment, and who provides massage therapy to clients at a specific location including, but not limited to, a rental space, home office space, offsite, or onsite space.

CHAPTER 197

(Com. Sub. for S. B. 526 - By Senators Chapman, Rose, and Willis)

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]

[Approved by the Governor on April 24, 2025.]

AN ACT to amend and reenact §30-5-10 of the Code of West Virginia, 1931, as amended, relating to updating a pharmacist's scope of practice; authorizing pharmacists to prescribe certain drugs in accordance with Food and Drug Administration labeling; limiting the conditions for which a pharmacist may test; requiring the pharmacist notify the patient's primary care physician; and limiting a prescription to a 30-day supply within a six-month time frame.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-10. Scope practice for licensed pharmacist.

(a) A licensed pharmacist may:

(1) Provide care related to the interpretation, evaluation, and implementation of medical orders;

(2) Dispense of prescription drug orders; participate in drug and device selection;

(3) Provide drug administration;

(4) Provide drug regimen review;

(5) Provide drug or drug-related research;

- (6) Perform patient counseling;
- (7) Provide pharmacy related primary care;
- (8) Provide pharmacist care in all areas of patient care, including collaborative pharmacy practice;
- (9) Compound and label drugs and drug devices;
- (10) Proper and safe storage of drugs and devices;
- (11) Maintain proper records;
- (12) Provide patient counseling concerning the therapeutic value and proper use of drugs and devices;
- (13) Order laboratory tests in accordance with drug therapy management;
- (14) Provide medication therapy management; and
- (15) Prescribe drugs, excluding controlled substances, that are in accordance with the product's federal Food and Drug Administration-approved labeling and that are limited to conditions for which a relevant patient medication history has been taken and:
 - (A) (i) Have a test that is used to guide diagnosis or clinical decision-making that is waived under the federal Clinical Laboratory Improvement Amendments of 1988 that indicates the existence of the following conditions only: influenza; SARS-COV-2; and RSV; or
 - (ii) refill an expired prescription for an epinephrine injection device.
- (B) The pharmacist shall, within 72 hours, notify the patient's primary care physician of the test result and the permissible drug prescribed and dispensed.
- (C) A prescription dispensed or prescribed pursuant to this article is limited to up to a 30-day supply within a six-month

period, if more than 10 days is prescribed or dispensed, then the pharmacist shall notify the primary care physician. If no primary care physician is identified, the pharmacist shall attempt to make a patient referral to a primary care physician.

(b) A licensee meeting the requirements as promulgated by legislative rule may administer immunizations.

(c) The sale of any medicine, if the contents of its container, or any part thereof, taken at one time, are likely to prove poisonous, deleterious, or habit-forming is prohibited by any person other than a registered pharmacist, who shall take precautions to acquaint the purchaser of the nature of the medicine at the time of sale.

CHAPTER 198

**(Com. Sub. for S. B. 565 - By Senators Taylor, Clements,
Garcia, Hamilton, Morris, Roberts, Rose, Rucker, and Deeds)**

[Passed April 10, 2025; in effect 90 days from passage (July 9, 2025)]

[Approved by the Governor on May 1, 2025.]

AN ACT to amend and reenact §30-8-3, §30-8-6, §30-8-9, and §30-8A-1 of the Code of West Virginia, 1931, as amended; to amend the code by adding a new section, designated §30-8-23; and to amend the code by adding a new article, designated §30-8B-1, §30-8B-2, §30-8B-3, §30-8B-4, §30-8B-5, §30-8B-6, §30-8B-7, and §30-8B-8, relating to the practice of optometry; defining terms; updating rule-making authority; modifying scope of practice; permitting the performance of certain procedures when trained; permitting the board to regulate the use of lasers by optometrists; setting forth laser certification requirements; establishing the minimum training; providing treatment guidelines; prohibiting certain practices; and providing for exemption from specified review requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. OPTOMETRISTS.

§30-8-3. Definitions.

As used in this article:

"Accreditation Council on Optometric Education (ACOE)" is the accrediting body for professional optometric degree (O.D.) programs, optometric residency programs, and optometric technician programs in the United States and Canada and is recognized as an accrediting body by the Council on Higher Education Accreditation (CHEA);

"Appendages" means the eyelids, the eyebrows, the conjunctiva, and the lacrimal apparatus;

"Applicant" means any person making application for a license, certificate, or temporary permit under the provisions of this article;

"Board" means the West Virginia Board of Optometry;

"Business entity" means any firm, partnership, association, company, corporation, limited partnership, limited liability company, or other entity owned by licensees that practices optometry;

"Certificate" means a prescription certificate issued under §30-8-15 of this code;

"Certificate holder" means a person authorized to prescribe certain drugs under §30-8-15 of this code;

"Examination, diagnosis, and treatment" means a method compatible with accredited optometric education and professional competence pursuant to this article;

"License" means a license to practice optometry;

"Licensee" means an optometrist licensed under the provisions of this article;

"Permittee" means a person holding a temporary permit;

"Practice of optometry" means the examining, diagnosing, and treating of any visual defect or abnormal condition of the human eye or its appendages within the scope established in this article or associated rules and the performance of those procedures taught and trained through schools or colleges of optometry accredited by the Accreditation Council on Optometric Education, or its successors or equivalents;

"Temporary permit" or "permit" means a permit issued to a person who has graduated from an approved school, has taken the examination prescribed by the board, and is awaiting the results of the examination.

§30-8-6. Rulemaking.

(a) The board shall propose rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code, to implement the provisions of this article, including:

(1) Standards and requirements for licenses, certificates, and permits;

(2) Procedures for examinations and reexaminations;

(3) Requirements for third parties to prepare and/or administer examinations and reexaminations;

(4) Educational and experience requirements;

(5) The passing grade on the examinations;

(6) Standards for approval of courses and curriculum;

(7) Procedures for the issuance and renewal of licenses, certificates, and permits;

(8) A fee schedule;

(9) A prescription drug formulary classifying those categories of oral drugs rational to the diagnosis and treatment of visual defects or abnormal conditions of the human eye and its appendages, which may be prescribed by licensees from Schedules III, IV, and V of the Uniform Controlled Substances Act. The drug formulary may also include oral antibiotics, oral nonsteroidal anti-inflammatory drugs, and oral carbonic anhydrase inhibitors;

(10) Requirements for prescribing and dispensing contact lenses that contain and deliver pharmaceutical agents that have been approved by the Food and Drug Administration as a drug;

(11) Continuing education requirements for licensees;

(12) The procedures for denying, suspending, revoking, reinstating, or limiting the practice of licensees, certificate holders, and permittees;

(13) Requirements for inactive or revoked licenses, certificates, or permits; and

(14) Any other rules necessary to effectuate the provisions of this article.

(b) The board shall promulgate procedural and interpretive rules in accordance with §29A-3-8 of this code.

§30-8-9. Scope of practice.

(a) A licensee may:

(1) Examine, diagnose, and treat diseases and conditions of the human eye and its appendages within the scope established in this article or associated rules;

(2) Administer or prescribe any drug for topical application to the anterior segment of the human eye for use in the examination, diagnosis, or treatment of diseases and conditions of the human eye and its appendages: *Provided*, That the licensee has first obtained a certificate;

(3)(A) Administer or prescribe any drug from the drug formulary, as established by the board pursuant to §30-8-6 of this code, for use in the examination, diagnosis, or treatment of diseases and conditions of the human eye and its appendages: *Provided*, That the licensee has first obtained a certificate;

(B) New drugs and new drug indications may be added to the drug formulary by approval of the board;

(4) Administer epinephrine by injection to treat emergency cases of anaphylaxis or anaphylactic shock;

(5) Prescribe and dispense contact lenses that contain and deliver pharmaceutical agents and that have been approved by the Food and Drug Administration as a drug;

(6) Prescribe, fit, apply, replace, duplicate, or alter lenses, prisms, contact lenses, orthoptics, vision training, vision rehabilitation;

(7) Perform the following procedures:

(A) Remove a foreign body from the ocular surface and adnexa utilizing a noninvasive method;

(B) Remove a foreign body, external eye, conjunctival, superficial, using topical anesthesia;

(C) Remove embedded foreign bodies or concretions from conjunctiva, using topical anesthesia, not involving sclera;

(D) Remove corneal foreign body not through to the second layer of the cornea using topical anesthesia;

(E) Epilation of lashes by forceps;

(F) Closure of punctum by plug; and

(G) Dilation of the lacrimal puncta with or without irrigation;

(8) Furnish or provide any prosthetic device to correct or relieve any defects or abnormal conditions of the human eye and its appendages;

(9) Order laboratory tests rational to the examination, diagnosis, and treatment of a disease or condition of the human eye and its appendages;

(10) Use a diagnostic or therapeutic laser; and

(11) A licensee may perform those procedures he or she was taught and trained through schools or colleges of optometry accredited by the Accreditation Council on Optometric Education, or its successors or equivalents.

(12) A licensee may perform laser procedures as outlined in section §30-8B-1 *et seq.* of this code.

(b) A licensee may not:

(1) Perform surgery except as provided in this article; or by legislative rule;

(2) Use Schedule II controlled substances. However, an oral pharmaceutical certified licensee may prescribe hydrocodone and hydrocodone containing drugs for a duration of no more than three days;

(3) Treat systemic disease; or

(4) Present to the public that he or she is a specialist in surgery of the eye.

§30-8-23. Exemption from review requirements.

The addition of therapeutic laser procedures, as set forth in §30-8B-6 of this code, to the scope of practice of a licensee, as defined pursuant to §30-8-3 of this code, is exempt from the requirements of §30-1A-1 *et seq.* of this code.

ARTICLE 8A. EYE CARE CONSUMER PROTECTION LAW.

§30-8A-1. Definitions.

As used in this article:

"Contact lens" means a lens placed directly on the surface of the eye, regardless of whether it is intended to correct a visual defect. Contact lens includes, but is not limited to, a cosmetic, therapeutic, or corrective lens;

"Board" means the West Virginia Board of Optometry;

"Diagnostic contact lens" means a contact lens used to determine a proper contact lens fit;

"Direct supervision" means supervision that occurs when a licensee is actually present in the building;

"Examination and evaluation" means an assessment of the ocular health and visual status of a patient that does not consist solely of objective refractive data or information generated by an automated refracting device or other automated testing device for the purpose of writing a valid prescription;

"Licensee" means a person who is authorized to engage in the practice of optometry under §30-8-1 *et seq.* of this code;

"Special requirements" means the type of lens design, lens material, tint, or lens treatments;

"Spectacles" means an optical instrument or device worn or used by an individual that has one or more lenses designed to correct or enhance vision to address the visual needs of the individual wearer. This includes spectacles that may be adjusted to achieve different types or levels of visual correction or enhancement;

"Valid prescription" means one of the following, as applicable:

(1) For a contact lens, a written or electronic order by a licensee who has conducted an examination and evaluation of a patient and has determined a satisfactory fit for the contact lens based on an analysis of the physiological compatibility of the lens or the cornea and the physical fit and refractive functionality of the lens on the patient's eye. To be a valid prescription under this subdivision, it shall at least include the following:

(A) A statement that the prescription is for a contact lens;

(B) The contact lens type or brand name, or for a private label contact lens, the name of the manufacturer, trade name of the private label brand, and, if applicable, trade name of the equivalent or similar brand;

(C) All specifications necessary to order and fabricate the contact lens, including, if applicable, the power, material, base curve or appropriate designation, and diameter;

(D) The quantity of contact lenses to be dispensed;

(E) The number of refills;

(F) Specific wearing instructions and contact lens disposal parameters;

(G) The patient's name;

(H) The date of the examination and evaluation;

(I) The date the prescription is originated;

(J) The prescribing licensee's name, address, and telephone number;

(K) The prescribing licensee's written or electronic signature, or other form of authentication; and

(L) An expiration date of not less than one year from the date of the examination and evaluation or a statement of the reasons why a shorter time is appropriate based on the medical needs of the patient;

(2) For spectacles, a written or electronic order by a licensee who has examined and evaluated a patient. To be a valid prescription under this subdivision, it shall include at least the following:

(A) A statement that the prescription is for spectacles;

(B) As applicable and as specified for each eye, the lens power including the spherical power, cylindrical power including axis, prism, and power of the multifocal addition;

(C) Any special requirements, the omission in the opinion of the prescribing licensee, would adversely affect the vision or ocular health of the patient;

(D) The patient's name;

(E) The date of the examination and evaluation;

(F) The date the prescription is originated;

(G) The prescribing licensee's name, address, and telephone number;

(H) The prescribing licensee's written or electronic signature, or other form of authentication; and

(I) An expiration date of not less than one year from the date of the examination and evaluation or a statement of the reasons why a shorter time is appropriate based on the medical needs of the patient.

ARTICLE 8B. LASER PROCEDURES.

§30-8B-1. General.

This article establishes requirements, procedures, and standards for the certification of licensees to perform certain laser procedures.

§30-8B-2. Definitions.

"Laser certificate holder" means a licensee who has met the requirements of this rule and has been issued an Ophthalmic Laser Utilization Certificate by the board.

"Ophthalmic laser" means any of the commercially available light amplification by stimulated emission of radiation (LASER) devices approved by the US Food and Drug Administration for use on the human eye and adnexa.

"Posterior capsulotomy" means the ophthalmic laser technique most commonly used to treat the clouding of the eye's posterior lens capsule (PCO) that commonly occurs following cataract surgery.

"Peripheral iridotomy" means the standard first-line treatment in angle-closure glaucoma and eyes at risk for this condition most commonly treated utilizing ophthalmic lasers.

"Selective laser trabeculoplasty" means a simple, yet highly effective laser procedure that reduces the intraocular pressure associated with glaucoma that uses short pulses of low-energy light to target the melanin, or pigment, in specific cells of the affected eye. The surrounding, non-pigmented cells are untouched and undamaged.

§30-8B-3. Certification generally.

(a) A licensee shall meet all the requirements as listed in this article in order to be certified to utilize an ophthalmic laser.

(b) A licensee shall obtain ophthalmic laser utilization certification to utilize ophthalmic lasers in West Virginia.

(c) An applicant for licensure by examination, by reciprocity, or by reinstatement after May 1, 2025, shall only be granted licensure if the applicant meets the requirements for ophthalmic laser utilization certification.

(d) Upon the licensee's successful completion of the requirements and application listed in §30-8B-4 and §30-8B-5 of this code, and approval by the board, an Ophthalmic Laser Utilization Certificate may be issued.

§30-8B-4. Certification requirements.

To be certified the licensee shall:

(1) Complete the required application form designed by the board; and

(2) Submit proof of attendance and satisfactory completion of education and training, including, but not limited to, a training requirement that at a minimum of five posterior capsulotomy, four peripheral iridotomy and five selective laser trabeculoplasty procedures be supervised for each individual person proposing certification. A licensee shall successfully demonstrate clinical proficiency to perform the procedure or procedures on a living human eye to the proctor's satisfaction. The procedures shall be proctored by an optometrist or ophthalmologist that already meets the above criteria and submitted to the board for review and any additional requirements as established by the board in §30-8B-5 of this code.

(3) A licensee may apply for certification for each approved procedure separately and may receive certification individually for

each procedure based upon the above criteria applied individually for each approved procedure.

§30-8B-5. Education and training.

(a) Any license granted to an applicant who graduated from an accredited school or college of optometry in 2025 or thereafter, and who passed the Laser and Surgical Procedures Examination administered by the National Board of Examiners in Optometry or other equivalent proficiency examination approved by the board shall be deemed to have met the education and training criteria listed in §30-8B-5 of this code.

(b) The board shall accept post graduate courses or training programs for certification that are provided by or through a school or college of optometry accredited by the Accreditation Council on Optometric Education or its successor organization provided, the courses or training programs include the criteria listed in §30-8B-5(c)(1) through §30-8B-5(c)(3);

(c) The board, at its discretion, may approve courses or training programs provided through organizations other than accredited schools or colleges of optometry certifying that the optometrist is competent in the utilization of ophthalmic lasers if, and only if, the courses or training programs meet the following minimum criteria:

(1) Each course or training program shall include indications, contra-indications, techniques, risks, and benefits.

(2) Each course or training program shall include appropriate follow up and management protocols and techniques;

(3) Each course or training program shall teach the procedures in a closely supervised environment with a proficiency assessment.

(d) A list of approved courses or training programs for ophthalmic laser utilization certification will be maintained by the board for public inspection.

§30-8B-6. Treatment guidelines.

(a) A certificate holder may utilize ophthalmic lasers which are considered rational to the diagnosis and treatment of the human eye or its appendages.

(b) The board will maintain a list of approved treatment indications and shall update the list as new treatments, technologies, and training become available.

(c) Approved treatment indications include:

(1) Posterior capsulotomy;

(2) Peripheral iridotomy; and

(3) Selective laser trabeculoplasty (SLT).

(d) The certificate holder shall follow all applicable Occupational Safety and Health Administration (OSHA) guidelines pertaining to ophthalmic lasers.

(e) The certificate holder shall adhere to generally accepted standards of care and follow established clinical guidelines for utilization of ophthalmic lasers. The certificate holder shall monitor the patient for any adverse reaction and provide appropriate follow up care.

(f) A certificate holder shall report any adverse outcomes related to surgical procedures performed under this article to the board within 10 business days. Such reports shall include the relevant patient records necessary to evaluate the incident, in accordance with applicable privacy laws.

§30-8B-7. Restrictions.

(a) The licensee shall perform only those ophthalmic laser procedures approved by the board.

(b) New ophthalmic laser procedures may be added to the list of approved procedures by a decision of the board based on the following criteria:

(1) A new or existing ophthalmic laser device or procedure has been approved by the Food and Drug Administration for the treatment of the eye or its appendages; and

(2) A new or existing ophthalmic laser device or procedure has gained accepted use in the eye care field. Such acceptance may be identified by its inclusion in the curriculum of an optometry school accredited by the Accreditation Council on Optometric Education or its successor, or approved post-graduate continuing education, through peer-reviewed, evidence-based research and professional journal articles, or by, inclusion in established standards of practice and care published by professional organizations.

(c) A licensee may not perform a procedure on a pediatric patient. A licensee shall refer a pediatric patient to an ophthalmologist.

§30-8B-8. Exemption from review requirements.

The addition of therapeutic laser procedures, as set forth in §30-8B-6 of this code, to the scope of practice of a licensee, as defined pursuant to §30-8-3 of this code, is exempt from the requirements of §30-1A-1 *et seq.* of this code.

CHAPTER 199

(S. B. 712 - By Senator Oliverio)

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]
[Approved by the Governor on April 24, 2025.]

AN ACT to amend and reenact §5-10-2, §5-10-19, §5-10-27b, §5-10-48, §5-10C-4, §5-10D-6a, §7-14D-2, §7-14D-9b, §7-14D-24a, §8-22A-2, §8-22A-11, §8-22A-34, §15-2-45, §15-2A-2, §15-2A-6b, §16-5V-2, §16-5V-13, §16-5V-35, §18-7A-3, §18-7A-13a, §18-7A-28b, §18-7B-2, §18-7B-12a, §20-18-2, §20-18-14, §20-18-30, §51-9-1a, §51-9-10, and §51-9-12b of the Code of West Virginia, 1931, as amended; and to amend the code by adding a new section, designated §15-2A-6e, relating to retirement provisions of the West Virginia Public Employees Retirement System, the Deputy Sheriffs' Retirement System, the Municipal Police and Firefighters Retirement System, the West Virginia State Police Death, Disability, and Retirement System, the State Police Retirement System, the Emergency Medical Services Retirement System, the Teachers Retirement System, the Teachers' Defined Contribution Retirement System, the Natural Resources Police Officers Retirement System, and the Judges' Retirement System; defining the terms "bona fide separation from service upon retirement", "participating public employer", and "retirant"; amending the definition of "active military duty" to include the United States Space Force in certain retirement systems; amending the definition of "required beginning date" to be consistent with federal law; clarifying notification by employer of retirant who returns to work by a participating public employer; adding the Emergency Medical Services Retirement System to the pick-up provisions of members' contributions by participating public employers; amending retired public safety officers provision to pay for qualified

health insurance premiums from eligible retirement plans; clarifying recall provisions for retired members of the Judges' Retirement System; and providing technical clean-up of provisions.

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.**

§5-10-2. Definitions.

Unless a different meaning is clearly indicated by the context, the following words and phrases as used in this article have the following meanings:

(1) "Accumulated contributions" means the sum of all amounts deducted from the compensations of a member and credited to his or her individual account in the members' deposit fund, together with regular interest on the contributions;

(2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member;

(3) "Actuarial equivalent" means a benefit of equal value computed upon the basis of a mortality table and regular interest adopted by the board of trustees from time to time: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, actuarial equivalent shall be computed using the mortality tables and interest rates required to comply with those requirements;

(4) "Annuity" means an annual amount payable by the retirement system throughout the life of a person. All annuities

shall be paid in equal monthly installments, rounding to the upper cent for any fraction of a cent;

(5) "Annuity reserve" means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of mortality and other tables of experience, and regular interest, adopted by the board of trustees from time to time;

(6) "Beneficiary" means any person which shall include an irrevocable special needs trust, as that term is defined in this section, for the benefit of one individual beneficiary and which trust terminates upon the death of such individual with no further annuity benefits being payable, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(7) "Board of Trustees" or "board" means the Board of Trustees of the West Virginia Consolidated Public Retirement Board;

(8) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with the employer or any participating employer in the system for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with a participating public employer. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent full-time, permanent part-time, temporary full-time, temporary part-time, per diem or leased employee basis;

(9) "Compensation" means the remuneration paid a member by a participating public employer for personal services rendered by the member to the participating public employer. In the event a member's remuneration is not all paid in money, his or her participating public employer shall fix the value of the portion of the remuneration which is not paid in money: *Provided*, That members hired in a position for the first time on or after July 1, 2014, who receive nonmonetary remuneration shall not have nonmonetary remuneration included in compensation for

retirement purposes and nonmonetary remuneration may not be used in calculating a member's final average salary. Any lump sum or other payments paid to members that do not constitute regular salary or wage payments are not considered compensation for the purpose of withholding contributions for the system or for the purpose of calculating a member's final average salary. These payments include, but are not limited to, attendance or performance bonuses, one-time flat fee or lump sum payments, payments paid as a result of excess budget, or employee recognition payments. The board shall have final power to decide whether the payments shall be considered compensation for purposes of this article;

(10) "Contributing service" means service rendered by a member within this state and for which the member made contributions to a public retirement system account of this state, to the extent credited him or her as provided by this article;

(11) "Credited service" means the sum of a member's prior service credit, military service credit, workers' compensation service credit, and contributing service credit standing to his or her credit as provided in this article;

(12) "Employee" means any person who serves regularly as an officer or employee, full-time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia National Guard whose compensation, in whole or in part, is paid by the federal government: *Provided*, That an employee of the Legislature whose term of employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is employed during regular sessions or during the interim between regular sessions in seven or more consecutive calendar years, as certified by the clerk of the house in which the employee served, is an employee, any provision to the contrary in this article notwithstanding, and is entitled to credited service in

accordance with provisions of §5-10-14 of this code: *Provided, however*, That members of the legislative body of any political subdivision and commissioners of the West Virginia Claims Commission are employees receiving one year of service credit for each one-year term served and prorated service credit for any partial term served, anything contained in this article to the contrary notwithstanding: *Provided further*, That only a compensated board member of a participating public employer appointed to a board of a nonlegislative body for the first time on or after July 1, 2014, who normally is required to work 12 months per year and 1,040 hours of service per year is an employee. In any case of doubt as to who is an employee within the meaning of this article, the board of trustees shall decide the question;

(13) "Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required;

(14) "Final average salary" means either of the following: *Provided*, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401 (a) (17) of the Internal Revenue Code: *Provided, however*, That the provisions of §5-10-22h of this code are not applicable to the amendments made to this subdivision during the 2011 regular session of the Legislature:

(A) The average of the highest annual compensation received by a member, including a member of the Legislature who participates in the retirement system in the year 1971 or thereafter, during any period of three consecutive years of credited service contained within the member's 15 years of credited service immediately preceding the date his or her employment with a participating public employer last terminated: *Provided*, That for persons who were first hired on or after July 1, 2015, any period of five consecutive years of contributing service contained within the

member's 15 years of credited service immediately preceding the date his or her employment with a participating public employer last terminated; or

(B) If the member has less than five years of credited service, the average of the annual rate of compensation received by the member during his or her total years of credited service; and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision, of a member of the Legislature who participates in the retirement system as a member of the Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation (the total of all compensation paid under §4-2A-2, §4-2A-3, §4-2A-4, and §4-2A-5 of this code), in the year 1971, or in any year thereafter, plus any other compensation he or she receives in any year from any other participating public employer including the State of West Virginia, without any multiple in excess of one times his or her actual legislative compensation and other compensation, shall be used: *Provided*, That final average salary for any former member of the Legislature or for any member of the Legislature in the year 1971 who, in either event, was a member of the Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on November 30 in any one or more of those three years and who participated in the retirement system as a member of the Legislature in any one or more of those years means: (i) Either, notwithstanding the provisions of this subdivision preceding this proviso, \$1,500 multiplied by eight, plus the highest other compensation the former member or member received in any one of the three years from any other participating public employer including the State of West Virginia; or (ii) final average salary determined in accordance with paragraph (A) or (B) of this subdivision, whichever computation produces the higher final average salary, and in determining the annual compensation under subparagraph (ii) of this paragraph, the legislative compensation of the former member shall be computed on the basis of \$1,500 multiplied by eight, and the legislative compensation of the member shall be computed on the basis set forth in the provisions of this subdivision immediately preceding this paragraph or on the basis of \$1,500 multiplied by eight,

whichever computation as to the member produces the higher annual compensation;

(15) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, codified at Title 26 of the United States Code;

(16) "Limited credited service" means service by employees of the West Virginia Educational Broadcasting Authority, in the employment of West Virginia University, during a period when the employee made contributions to another retirement system, as required by West Virginia University, and did not make contributions to the Public Employees Retirement System: *Provided*, That while limited credited service can be used for the formula set forth in §5-10-21(e) of this code, it may not be used to increase benefits calculated under §5-10-22 of this code;

(17) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board;

(18) "Member" means any person who has accumulated contributions standing to his or her credit in the members' deposit fund;

(19) "Participating public employer" means the State of West Virginia, any board, commission, department, institution, or spending unit, and includes any agency created by rule of the Supreme Court of Appeals having full-time employees, which for the purposes of this article is considered a department of state government; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Public Employees Retirement System;

(20) "Plan year" means the same as referenced in §5-10-42 of this code;

(21) "Political subdivision" means the State of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any mental health agency participating in the Public Employees Retirement System before July 1, 1997, is considered a political subdivision solely for the purpose of permitting those employees who are members of the Public Employees Retirement System to remain members and continue to participate in the retirement system at their option after July 1, 1997: *Provided, however*, That the Regional Community Policing Institute which participated in the Public Employees Retirement System before July 1, 2000, is considered a political subdivision solely for the purpose of permitting those employees who are members of the Public Employees Retirement System to remain members and continue to participate in the Public Employees Retirement System after July 1, 2000;

(22) "Prior service" means service rendered prior to July 1, 1961, to the extent credited a member as provided in this article;

(23) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board of trustees adopts from time to time;

(24) "Required beginning date" means April 1 of the calendar year following the later of:

(A) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(B) The calendar year in which he or she retires or otherwise separates from covered employment.

(C) The applicable age is:

(i) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(ii) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(iii) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of § 401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time;

(25) "Retirant" means any member who commences an annuity payable by the retirement system;

(26) "Retirement" means a member's withdrawal from the employ of a participating public employer and the commencement of an annuity by the retirement system;

(27) "Retirement system" or "system" means the West Virginia Public Employees Retirement System created and established by this article;

(28) "Retroactive service" means: (1) Service between July 1, 1961, and the date an employer decides to become a participating member of the Public Employees Retirement System; (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost in accordance with 162 CSR 5.12; and (3) service of any member of a legislative body or employees of the State Legislature whose term of employment is otherwise classified as temporary for which the employee is eligible, but for which the employee did not elect to participate at that time;

(29) "Service" means personal service rendered to a participating public employer by an employee of a participating public employer;

(30) "Special needs trust" means a trust established pursuant to §44D-8B-13 of this code for an individual beneficiary with a disability and such special needs trust is or will become irrevocable by the time the retirant names the special needs trust as the

beneficiary of retirant's annuity benefits in place of the individual beneficiary and terminates upon the death of the individual beneficiary with no further annuity benefits being payable; and

(31) "State" means the state of West Virginia.

§5-10-19. Employers to file information as to employees' service and reemployment of retirants.

(a) Each participating public employer shall file with the board of trustees, in such form as the board shall from time to time prescribe, a detailed statement of all service rendered to participating public employers by each of its employees and by any retirant who retired under section twenty-two-c of this article and who is working for the employer on a contract basis, as defined in section twenty-two-c of this article, and such other information as the board shall require in the operation of the retirement system: *Provided*, That for any retirants becoming reemployed by a participating public employer pursuant to the provisions of §5-10-48 of this code, the retirement board may also require of retirants and participating public employers such reports, forms and verifications as it deems necessary to ensure that a bona fide separation from service upon retirement has occurred.

(b) Prior to any retirant subsequently becoming employed on a permanent full-time, permanent part-time, per diem, leased employee, temporary full-time or temporary part-time basis by a participating public employer, the employer shall notify the board and the retirant, in writing, if and when any such potential employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of such employment, the employer shall notify the board, in writing, of the retirant's subsequent employment.

§5-10-27b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this code. This provision applies to plan years beginning after December 31, 1986. Notwithstanding

anything in this code to the contrary, the payment of benefits under this article shall be determined and made in accordance with §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of §401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of §1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under §401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section shall not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under § 401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this retirement system which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the

remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §5-10-2 of this code; or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the

required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §5-10-2 of this code; or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

(a) The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system and that this interest necessitates that certain limitations be placed upon an individual's ability to retire from the system and to then later return to state employment as an employee with a participating public employer while contemporaneously drawing an annuity from the system. The Legislature hereby further finds and declares that the interests of the public are served when persons having retired from public employment are permitted, within certain limitations, to render post-retirement employment in positions of public service, either in elected or appointed capacities. The Legislature further finds and declares that it has the need for qualified employees and

that in many cases an employee of the Legislature will retire and be available to return to work for the Legislature as a per diem employee. The Legislature further finds and declares that in many instances these employees have particularly valuable expertise which the Legislature cannot find elsewhere. The Legislature further finds and declares that reemploying these persons on a limited per diem basis after they have retired is not only in the best interests of this state but has no adverse effect whatsoever upon the actuarial soundness of this particular retirement system.

(b) For the purposes of this section: (1) "Regularly employed on a full-time basis" means employment of an individual by a participating public employer, in a position other than as an elected or appointed public official, which normally requires 12 months per year service and at least 1,040 hours of service per year in that position; (2) "temporary full-time employment" or "temporary part-time employment" means employment of an individual on a temporary or provisional basis by a participating public employer, other than as an elected or appointed public official, in a position which does not otherwise render the individual as regularly employed; (3) "former employee of the Legislature" means any person who has retired from employment with the Legislature and who has at least 10 years' contributing service with the Legislature; and (4) "reemployed by the Legislature" means a former employee of the Legislature who has been reemployed on a per diem basis not to exceed 175 days per calendar year.

(c) Subject to the provisions of subsection (i) of this section, if a retirant becomes regularly employed on a full-time basis by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system. If his or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to the additional employment, the annuity to be computed according to §5-10-22 of this code. If his or her reemployment is for a period less than one year, he or she may request in writing that the employee and employer retirement contributions submitted during reemployment be

credited to the participating public employer pursuant to §5-10-44 of this code, and his or her previous annuity shall be reinstated effective the first day of the month following termination of reemployment and the board's receipt of written notice thereof. Subject to the provisions of subsection (i) of this section, a retirant may accept legislative per diem, temporary full-time, or temporary part-time employment from a participating employer without suspending his or her retirement annuity so long as he or she does not receive annual compensation in excess of \$25,000.

(d) *Senior judges, justices, and magistrates.* —

(1) Notwithstanding the provisions of subsection (c) of this section, a retired intermediate court judge, circuit court judge, or family court judge, or justice who is recalled and assigned to temporary service as a senior judge or justice by the West Virginia Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of §51-9-10 of this code while continuing to receive his or her annuity, subject to the provisions of subsection (i) of this section.

(2) Notwithstanding the provisions of subsection (c) of this section, a retired magistrate who is recalled and assigned to temporary service as a senior magistrate by the West Virginia Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of §50-1-6a of this code while continuing to receive his or her annuity, subject to the provisions of subsection (i) of this section.

(e) Subject to the provisions of subsection (i) of this section, if a member retires and is then subsequently elected to a public office, or is subsequently appointed to hold an elected public office, or is a former employee of the Legislature who has been reemployed by the Legislature, he or she has the option, notwithstanding subsection (c) of this section, to either:

(1) Continue to receive payment of his or her annuity while holding public office, or during any reemployment of a former employee of the Legislature on a per diem basis, in addition to the

salary he or she may be entitled to as an office holder, or as a per diem reemployed former employee of the Legislature; or

(2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of this subsection, a member who is participating in the system as an elected public official may not retire from his or her elected position and commence to receive an annuity from the system and then be elected or reappointed to the same position unless and until a continuous 12-month period has passed since his or her retirement from the position: *Provided*, That a former employee of the Legislature may not be reemployed by the Legislature on a per diem basis until at least 60 days after the employee has retired: *Provided, however*, That the limitation on compensation provided by subsection (c) of this section does not apply to the reemployed former employee: *Provided further*, That in no event may reemployment by the Legislature of a per diem employee exceed 175 days per calendar year.

(f) Subject to the provisions of subsection (i) of this section, a member who is participating in the system simultaneously as both a regular, full-time employee of a participating public employer, and as an elected or appointed member of the legislative body of the state or any political subdivision, may, upon meeting the age and service requirements of this article, elect to retire from his or her regular full-time state employment and may commence to receive an annuity from the system without terminating his or her position as a member of the legislative body of the state or political subdivision: *Provided*, That the retired member shall not, during the term of his or her retirement and continued service as a member of the legislative body of a political subdivision, be eligible to continue his or her participation as a contributing member of the system and shall not continue to accrue any additional service credit or benefits in the system related to the continued service.

(g) Notwithstanding the provisions of §5-10-27b of this code, any publicly elected member of the legislative body of any political subdivision or of the State Legislature, the Clerk of the House of Delegates, and the Clerk of the Senate may elect to commence

receiving in-service retirement distributions from this system upon attaining the age of 70 and one-half years: *Provided*, That the member is eligible to retire under the provisions of §5-10-20 or §5-10-21 of this code: *Provided, however*, That the member elects to stop actively contributing to the system while receiving the in-service distributions.

(h) The Legislature hereby finds and declares that a severe shortage of child protective services workers and adult protective services workers exists throughout the state, and therefore, a compelling state interest exists in expanding the use of retired employees to serve this critical need. Notwithstanding any provision of subsection (c) of this section to the contrary, a person receiving retirement benefits or who is eligible to receive retirement benefits pursuant to the provisions of this chapter, may accept employment as a child protective services worker or an adult protective services worker on a full-time or part-time basis without having payment of his or her retirement annuity suspended and without reentering the retirement system as a contributing member. This subsection is only applicable if the retired employee meets the minimum qualifications of the position, has been retired for at least 60 days, and is hired to fill an existing child protective services or adult protective services vacancy. The retired employee may continue to work under this subsection only as long as that position remains vacant. The vacant position shall be posted until it is filled by a regularly employed person meeting the minimum qualifications to serve as a child protective service worker or an adult protective service worker. The provisions of this subsection shall expire July 1, 2025.

(i) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by a participating public employer after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the retirement system. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or his or her participating public employer fails to comply with §5-10-19 in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay

to the system the gross amount of all annuity payments received related to such voided retirement. The board may take any actions necessary or appropriate in accordance with the provisions of §5-10-44 to recover such annuity payments so that an in-service distribution is not deemed to have been made.

ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.

§5-10C-4. Pick-up of members' contributions by participating public employers.

(a) The State of West Virginia for its public employees and county boards of education for its teachers and nonteachers shall pick-up and pay the contributions which the employees are required by law to make to the retirement system in which they are a member for all compensation earned by its member employees after June 30, 1986. Any political subdivision that is a participating public employer in the West Virginia Public Employees Retirement System shall pick-up and pay the contributions which the employees are required by law to make to the retirement system in which they are members for all compensation earned by its member employees after January 1, 1995. Public employers participating in the Emergency Medical Services Retirement System shall pick-up and pay the contributions which the employees are required by law to make to the system in which they are members for all compensation earned by its member employees beginning January 1, 2008. Public employers participating in the Municipal Police Officers and Firefighters Retirement System shall pick-up and pay the contributions which the employees are required by law to make to the system in which they are members for all compensation earned by its member employees beginning January 1, 2010. Counties shall pick-up and pay the contributions which the employees are required by law to make to the Deputy Sheriff Retirement System in which they are members for all compensation earned by its member employees after June 30, 1998. Any election made by a political subdivision to pick-up and pay employee contributions prior to January 1, 1995, remains in effect and is not altered or amended by the amendments made to this section during the regular legislative session, 1995. Unless a

different commencement date for pick-up is specifically stated in this section, all participating public employers under this article, with respect to retirement systems subject to this article, shall pick-up and pay the contributions which their employees are required by law to make to the retirement system in which they are a member from and after the commencement of the required employee contributions.

(b) When the participating public employer picks up and pays the contributions of its member employees, the contributions, although designated by statute as employee contributions, shall be treated as employer contributions in determining the tax treatment thereof under article twenty-one, chapter eleven of this code and the federal Internal Revenue Code of 1986, as amended, and the contributions shall not be included in the gross income of the employee in determining his or her tax treatment under those provisions until they are distributed or made available to the employee or his or her beneficiary. The participating public employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee, by effecting an equal cash reduction in the gross salary of the employee, or by an off-set against future salary increases, or by a combination of reduction in gross salary and off-set against future salary increases. In no event shall any employee of a participating public employer have the right to opt out of pick-up or to elect to receive the picked-up and contributed amounts directly instead of having them paid by the participating public employer into the retirement system pursuant to this article.

(c) When employee contributions are picked up and paid by the participating public employer, they shall be treated by the board of trustees in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions are picked up by the participating public employer.

(d) The amount of employee contributions picked up by the participating public employer shall be paid to the retirement system in the manner and form and in the frequency required by the board of trustees and shall be accompanied by supporting data that the board of trustees may prescribe. When paid to the retirement

system, each of these amounts shall be credited to the deposit fund account of the member for whom the contribution was picked up and paid by the participating public employer.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-6a. Voluntary election by eligible retired public safety officers to have amounts from eligible retirement plan distributed to pay for qualified health insurance premiums.

(a) Any eligible retired public safety officer who is a participant or member under any eligible retirement plan administered by the board may voluntarily elect to have amounts from an eligible retirement plan distributed to the eligible retired public safety officer in order to pay for his or her qualified health insurance premiums directly to his or her insurance provider. Alternatively, any eligible retired public safety officer who is a participant or member under any eligible retirement plan administered by the board may voluntarily elect to have amounts from an eligible retirement plan deducted and paid by the board directly to the West Virginia Public Employees Insurance Agency in order to pay for qualified health insurance premiums owed by the eligible retired public safety officer. Such election shall be made in writing, in a form and manner authorized by the board, and shall be consistent with the provisions of §402(l)(6) of the Internal Revenue Code as it may be amended from time to time. Said election shall be effective for all tax years of the eligible retired public safety officer after the election is made, unless and until otherwise terminated by the eligible retired public safety officer in writing and in a form and manner authorized by the board: *Provided*, That any election currently on file with the board and in effect shall be deemed effective for all tax years after the election was made until terminated by the eligible retired public safety officer in writing and in a form and manner authorized by the board.

(b) The definitions of the following terms contained in §402(l)(4) of the Internal Revenue Code, as it may be amended from time to time, shall apply for purposes of this section:

- (1)"Eligible retirement plan";
- (2)"Eligible retired public safety officer";
- (3)"Public safety officer"; and
- (4)"Qualified health insurance premiums".

(c) The amount which a participant or member may elect to have distributed pursuant to subsection (a) of this section shall not exceed \$3,000 per taxable year of the participant or member (or such other limitation amount as is specified in §402(l)(2) of the Internal Revenue Code, as it may be amended or as the limitation may be adjusted from time to time) and any amounts so elected to be distributed shall be paid by the board or the eligible retired public safety officer directly to the provider in payment of the qualified health insurance premiums. "Qualified health insurance premiums" includes premiums for certain accident or health insurance plans and certain long-term care insurance contracts.

(d) For purposes of this section, all eligible retirement plans administered by the board shall be treated as a single plan.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the member's final average salary multiplied by the member's years of credited service: *Provided*, That members who are retired on or retire after July 1, 2018, shall have an accrued benefit of two and one-half percent of the member's final average salary multiplied by the member's years of credited service. A member's accrued benefit may not exceed the limits of

§415 of the Internal Revenue Code and is subject to the provisions of §7-14D-9a of this code.

(b) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member, or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code, either pursuant to §7-14D-7 of this code or §5-10-29 of this code as a result of covered employment together with regular interest on the deducted amounts.

(c) "Active member" means a member who is active and contributing to the plan.

(d) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(e) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of §415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(f) "Annual compensation" means the wages paid to the member during covered employment within the meaning of §3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under §414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash, or noncash fringe benefits or both, deferred compensation, and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as

adjusted for cost of living in accordance with §5-10D-7 of this code and §401(a)(17) of the Internal Revenue Code.

(g) "Annual leave service" means accrued annual leave.

(h) "Annuity starting date" means the first day of the first calendar month following receipt of the retirement application by the board or the required beginning date, if earlier: *Provided*, That the member has ceased covered employment and reached early or normal retirement age.

(i) "Base salary" means a member's cash compensation exclusive of overtime from covered employment during the last 12 months of employment. Until a member has worked 12 months, annualized base salary is used as base salary.

(j) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

(k) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

(l) "Bona fide separation from service upon retirement" means that a member has completely terminated any employment relationship with the employer or any participating employer in the system for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with a participating employer. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis.

(m) "County commission" has the meaning ascribed to it in §7-1-1 of this code.

(n) "Covered employment" means either: (1) Employment as a deputy sheriff and the active performance of the duties required of a deputy sheriff; (2) the period of time which active duties are not performed but disability benefits are received under §7-14D-14 or §7-14D-15 of this code; or (3) concurrent employment by a

deputy sheriff in a job or jobs in addition to his or her employment as a deputy sheriff where the secondary employment requires the deputy sheriff to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the deputy sheriff contributes to the fund created in §7-14D-6 of this code the amount specified as the deputy sheriff's contribution in §7-14D-7 of this code.

(o) "Credited service" means the sum of a member's years of service, active military duty, disability service, unused annual leave service, and unused sick leave service.

(p) "Deputy sheriff" means an individual employed as a county law-enforcement deputy sheriff in this state and as defined by §7-14-2 of this code.

(q) "Dependent child" means either:

(1) An unmarried person under age 18 who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age 23:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in subparagraph (A), (B), or (C), paragraph (1) of this subdivision.

(r) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(s) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under §7-14D-14 or §7-14D-15 of this code.

(t) "Early retirement age" means age 40 or over and completion of 20 years of service.

(u) "Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(v) "Effective date" means July 1, 1998.

(w) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period, the member received disability benefits under §7-14D-14 or §7-14D-15 of this code, then "final average salary" means the average of the full monthly salary determined paid to the member during that period multiplied by 12.

(x) "Fund" means the West Virginia Deputy Sheriff Retirement Fund created pursuant to §7-14D-6 of this code.

(y) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties

are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof, and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §7-14D-14 or §7-14D-15 of this code; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission, irrespective of mitigation of damages. The same hours of service shall not be credited both under this paragraph and paragraph (1) or (2) of this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains rather than the plan year in which the award, agreement, or payment is made.

(z) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

(aa) "Member" means a person first hired as a deputy sheriff after the effective date of this article, as defined in subdivision (v) of this section, or a deputy sheriff first hired prior to the effective date and who elects to become a member pursuant to §7-14D-5 or §7-14D-17 of this code. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited or until cessation of membership pursuant to §7-14D-5 of this code.

(bb) "Monthly salary" means the portion of a member's annual compensation which is paid to him or her per month.

(cc) "Normal form" means a monthly annuity which is one-twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(dd) "Normal retirement age" means the first to occur of the following: (1) Attainment of age 50 years and the completion of 20 or more years of service; (2) while still in covered employment, attainment of at least age 50 years, and when the sum of current age plus years of service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years, and completion of five years of service; or (4) attainment of age 62 years and completion of five or more years of service.

(ee) "Partially disabled" means a member's inability to engage in the duties of deputy sheriff by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state, but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent June 30, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(ff) "Participating public employer" means any county commission of any county in this state employing any deputy sheriff who is a member of the plan.

(gg) "Public Employees Retirement System" means the West Virginia Public Employees Retirement System created by §5-10-1 *et seq.* of this code.

(hh) "Plan" means the West Virginia Deputy Sheriff Death, Disability, and Retirement Plan established by this article.

(ii) "Plan year" means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(jj) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services, or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(kk) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(ll) "Retirant" or "retiree" means any member who commences an annuity payable by the plan.

(mm) "Required beginning date" means April 1 of the calendar year following the later of:

(1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

(nn) "Retire" or "retirement" means a member's withdrawal from the employ of a participating public employer and the commencement of an annuity by the plan.

(oo) "Retirement income payments" means the annual retirement income payments payable under the plan.

(pp) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(qq) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(rr) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subdivision:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a deputy sheriff but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological, or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. A member's receipt of Social

Security disability benefits creates a rebuttable presumption that the member is totally disabled for purposes of this plan. Substantial gainful employment rebuts the presumption of total disability.

(ss) *Year of service.* — A member shall, except in his or her first and last years of covered employment, be credited with year of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

Hours of Service	Years of Service Credited

Less than 500	0

500 to 999	1/3

1,000 to 1,499	2/3

1,500 or more	1

During a member's first and last years of covered employment, the member shall be credited with one-twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §7-14D-14 or §7-14D-15 of this code. Except as specifically excluded, years of service include covered employment prior to the effective date. Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to §7-14D-13 or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to §7-14D-13 of this code or had prior to the effective date made the repayment pursuant to §5-10-18 of this code.

§7-14D-9b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this plan. This section applies to plan

years beginning after December 31, 1986. Notwithstanding anything in the plan to the contrary, the payment of benefits under this article shall be determined and made in accordance with §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of §401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of §1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the plan to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under §401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section shall not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under §401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this plan which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire

interest in the plan has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §7-14D-2 of this code; or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the

required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however,* That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §7-14D-2 of this code; or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

§7-14D-24a. Return to covered employment by retired member.

(a) Subject to the provisions of subsection (f) of this section, the annuity of any member who retires under the provisions of this article and who resumes service in covered employment shall be suspended while the member continues in covered employment. If there has been a bona fide separation from service upon retirement, the monthly annuity payment for the month in which the service resumes shall be prorated to the date of commencement of service, and the member shall again become a contributing member during resumption of service. At the conclusion of resumed service in covered employment the member shall have his or her annuity recalculated to take into account the entirety of service in covered employment.

(b) Notwithstanding the provisions of subsection (a) of this section, the annuity of a member who retires under the provisions of this article shall not be suspended if the member resumes covered employment and the following conditions are met:

(1) The member has been retired for at least 180 days;

(2) The retired member did not retire as a result of a disability pursuant to the provisions of §7-14D-14 of this code;

(3) The retired member is a certified, or certifiable, law-enforcement officer as provided in §30-29-5 of this code;

(4) The sheriff of the county seeking to re-employ the retired member has fewer than five deputies in his or her employ and has been unable to recruit additional qualified deputy sheriffs despite the exercise of due diligence;

(5) The re-employment of the retired member is for a period not to exceed five years or until such time as the sheriff may recruit additional deputy sheriffs to provide for five full-time deputy sheriffs not hired pursuant to this subsection, whichever is sooner; and the sheriff is required to post the vacancy until it is filled by a non-retirant;

(6) The retired member may not again become a contributing member of the Deputy Sheriff Retirement System while performing services under the provisions of this subsection; and

(7) The employer of any deputy sheriff rehired pursuant to this subsection shall remit an employer contribution pursuant to §7-14D-7 of this code on the deputy sheriff's monthly salary.

(c) Any retired member who is seeking re-employment pursuant to the provisions of this section shall not be subject to the maximum age restriction set forth in §7-14-8 of this code.

(d) Unless acted upon by the Legislature, the provisions of subsections (b) and (c) of this section will sunset on July 1, 2026. On or before October 1, 2025, any employer of a member of the Deputy Sheriff Retirement System rehired pursuant to subsection

(b) of this section must make a report to the Joint Standing Committee on Pensions and Retirement.

(e) Any member who retired under the early retirement provisions of §7-14D-11(b) of this code, and is subsequently reemployed in covered employment pursuant to subsection (a) of this section, and who again retires shall have his or her retirement annuity recalculated as if he or she were retiring at an age calculated by adding his or her original early retirement age to the number of years and months during which he or she was reemployed and contributing to the plan. In the event the artificially determined age, as determined in accordance with the preceding sentence, exceeds 60, the board shall not make any reduction for early retirement.

(f) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by a participating public employer after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the plan. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or the participating public employer fails to comply with subsection (g) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement. The board may take any actions necessary or appropriate in accordance with the provisions of §7-14D-7a to recover such annuity payments so that an in-service distribution is not deemed to have been made.

(g) Prior to any retirant subsequently becoming reemployed by a participating public employer, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis, the participating public employer shall notify the board and the retirant, in writing, if and when any such potential employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of such employment, the participating public employer shall notify the board, in writing, of the retirant's subsequent employment. The retirement board may also require of retirants and the participating public employer such reports, forms

and verifications as it deems necessary to ensure that a bona fide separation from service upon retirement has occurred.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

***§8-22A-2. Definitions.**

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member 2.75 percent per year of the member's final average salary for the first 20 years of credited service. Additionally, 2 percent per year for 21 through 25 years and 1.5 percent per year for each year over 25 years will be credited with a maximum benefit of 90 percent of a member's final average salary. A member's accrued benefit may not exceed the limits of §415 of the Internal Revenue Code and is subject to the provisions of §8-22A-10 of this code.

(b) "Accumulated contributions" means the sum of all retirement contributions deducted from the compensation of a member or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

(c) "Active military duty" means full-time duty in the active military service of the United States Army, Navy, Air Force, Coast Guard, Space Force, or Marine Corps. The term does not include regularly required training or other duty performed by a member of a reserve component or National Guard unless the member can substantiate that he or she was called into the full-time active military service of the United States and has received no compensation during the period of that duty from any board or employer other than the armed forces.

***Note:** This section was also amended by S. B. 712 (Chapter 199), which passed subsequent to this Act and S. B. 35 (Chapter 161), which passed subsequent to this Act.

(d) "Actuarial equivalent" means a benefit of equal value computed on the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of §415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of §3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of employment or services performed during the plan year plus amounts excluded under §414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits, or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost-of-living in accordance with §5-10D-7 of this code and §401(a) (17) of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the month for which an annuity is payable after submission of a retirement application or the required beginning date, if earlier. For purposes of this subsection, if retirement income payments commence after the normal retirement age, "retirement" means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member's normal retirement age and after completing proper written application for retirement on an application supplied by the board.

(h) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

(i) "Board" means the Consolidated Public Retirement Board.

(j) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with any participating public employer in the plan for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with a participating public employer. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis.

(k) "Covered employment" means either: (1) Employment as a full-time municipal police officer or firefighter and the active performance of the duties required of that employment; or (2) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by a municipal police officer or firefighter in a job or jobs in addition to his or her employment as a municipal police officer or firefighter in this plan where the secondary employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That the police officer or firefighter contributes to the fund created in this article the amount specified as the member's contribution in §8-22A-8 of this code.

(l) "Credited service" means the sum of a member's years of service, active military duty, and disability service.

(m) "Dependent child" means either: (1) An unmarried person under age 18 who is: (A) A natural child of the member; (B) a legally adopted child of the member; (C) a child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or (D) a stepchild of the member residing in the member's household at the time of the member's death; or (2) Any unmarried child under age 23: (A) Who is enrolled as a full-time student in an accredited college or university; (B) who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and (C) whose relationship with the member is

described in paragraph (A), (B) or (C), subdivision (1) of this subsection.

(n) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(o) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof, or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(p) "Effective date" means January 1, 2010.

(q) "Employer error" means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(r) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then "final average salary" means the average of the monthly compensation which the member was receiving in the plan year prior to the initial disability. "Final average salary" does not include any lump sum payment for unused, accrued leave of any kind or character.

(s) "Full-time employment" means permanent employment of an employee by a participating municipality in a position which normally requires 12 months per year service and requires at least 1,040 hours per year service in that position.

(t) "Fund" means the West Virginia Municipal Police Officers and Firefighters Retirement Fund created by this article.

(u) "Hour of service" means: (1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and (2) each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member may not be credited with any hours of service for any period of time he or she is receiving benefits under §8-22A-17 and §8-22A-18 of this code; and (3) each hour for which back pay is either awarded or agreed to be paid by the employing municipality, irrespective of mitigation of damages. The same hours of service may not be credited both under subdivision (1) or (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(v) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

(w) "Member" means, except as provided in §8-22A-32, §8-22A-33 and §8-22A-33a of this code, a person hired as a municipal police officer or municipal firefighter, as defined in this section, by a participating municipal employer on or after January 1, 2010. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(x) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

(y) "Municipality" has the meaning ascribed to it in this code.

(z) (1) "Municipal police officer" means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal policemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal policemen's pension and relief fund as provided in §8-22-16 of this code: *Provided*, That municipal police officer also means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to §8-22A-33 or §8-22A-33a of this code. Paid police department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(2) "Municipal firefighter" means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal firemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal firemen's pension and relief fund as provided in §8-22-16 of this code: *Provided*, That municipal firefighter also means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to §8-22A-33 or §8-22A-33a of this code. Paid fire department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(aa) "Municipal subdivision" means any separate corporation or instrumentality established by one or more municipalities, as permitted by law; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more municipalities.

(bb) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(cc) "Normal retirement age" means the first to occur of the following: (1) Attainment of age 50 years and the completion of 20 or more years of regular contributory service; (2) while still in covered employment, attainment of at least age 50 years and when the sum of current age plus regular contributory service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years and completion of 10 years of regular contributory service; or (4) attainment of age 62 years and completion of five or more years of regular contributory service.

(dd) "Participating public employer" means a municipality or municipal subdivision participating in this plan.

(ee) "Plan" means the West Virginia Municipal Police Officers and Firefighters Retirement System established by this article.

(ff) "Plan year" means the 12-month period commencing on January 1 of any designated year and ending the following December 31.

(gg) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, firefighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by § 72(t) (10) (B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b) (2) (v) as they may be amended from time to time.

(hh) "Regular contributory service" means a member's credited service excluding active military duty, disability service and accrued annual and sick leave service.

(ii) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(jj) "Required beginning date" means April 1 of the calendar year following the later of: (1) the calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

(kk) "Retirant" means any member who commences an annuity payable by the plan.

(ll) "Retirement income payments" means the monthly retirement income payments payable.

(mm) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(nn) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(oo) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a

continuous period of not less than 12 months. For purposes of this subsection: (1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration; and (2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.

(pp) "Vested" means eligible for retirement income payments after completion of five or more years of regular contributory service.

(qq) "Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based on the hours of service performed as covered employment and credited to the member during the plan year based on the following schedule:

Hours of Service	Year of Service Credited
Less than 500	0
500 to 999	1/3
1,000 to 1,499	2/3
1,500 or more	1

During a member's first and last years of covered employment, the member shall be credited with one-twelfth of a year of service

for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §8-22A-17 and §8-22A-18 of this code.

§8-22A-11. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this plan. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the contrary, the payment of benefits under this article shall be determined and made in accordance with §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of §401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of §1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the plan to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under §401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section shall not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that

exceed the applicable percentage permitted by the MDIB regulations under §401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this plan which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent on, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the plan has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the plan is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §8-22A-2 of this code; or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §8-22A-2 of this code; or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

§8-22A-34. Return to covered employment by retiree.

(a) Subject to the provisions of subsection (b) of this section, the annuity of any member who retires under the provisions of this article and who resumes service in covered employment shall be

suspended while the member continues in covered employment. If there has been a bona fide separation from service upon retirement, the monthly annuity payment for the month in which the service resumes shall be pro-rated to the date of commencement of service, and the member shall again become a contributing member during resumption of service. At the conclusion of resumed service in covered employment, the member shall have his or her annuity recalculated to take into account the entirety of service in covered employment.

(b) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by a participating public employer after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the plan. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or the participating public employer fails to comply with subsection (c) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement. The board may take any actions necessary or appropriate in accordance with the provisions of §8-22A-8a of this code to recover such annuity payments so that an in-service distribution is not deemed to have been made.

(c) Prior to any retirant subsequently becoming reemployed by a participating public employer, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis, the participating public employer shall notify the board and the retirant, in writing, if and when any such potential employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of such employment, the participating public employer shall notify the board, in writing, of the retirant's subsequent employment. The retirement board may also require of retirants and the participating public employer such reports, forms and verifications as it deems necessary to ensure that a bona fide separation from service upon retirement has occurred.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.**§15-2-45. Federal law minimum required distributions.**

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this code. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of §401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of §1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the fund to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary, or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system. For purposes of this section, the term "required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the fund is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in subsection (a) of this section; or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member

died; or (ii) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in subsection (a) of this section; or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-2. Definitions.

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

(1) "Accumulated contributions" means the sum of all amounts deducted from base salary, together with four percent interest compounded annually.

(2) "Active military duty" means full-time active duty with the armed forces of the United States, namely, the United States Air Force, Army, Coast Guard, Marines, Space Force, or Navy; and service with the National Guard or reserve military forces of any of the armed forces when the employee has been called to active full-time duty.

(3) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(4) "Agency" means the West Virginia State Police.

(5) "Base salary" means compensation paid to an employee without regard to any overtime pay.

(6) "Beneficiary" means a surviving spouse or other surviving beneficiary who is entitled to, or will be entitled to, an annuity or other benefit payable by the fund.

(7) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D- 1 *et seq.* of this code.

(8) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with the agency for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with the agency. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis.

(9) "Dependent child" means any unmarried child or children born to or adopted by a member or retirant of the fund who:

(A) Is under the age of 18;

(B) After reaching 18 years of age, continues as a full-time student in an accredited high school, college, university or business or trade school until the child or children reaches the age of 23 years; or

(C) Is financially dependent on the member or retirant by virtue of a permanent mental or physical disability upon evidence satisfactory to the board.

(10) "Dependent parent" means the member's or retirant's parent or step-parent claimed as a dependent by the member or retirant for federal income tax purposes at the time of the member's or retirant's death.

(11) "Employee" means any person regularly employed in the service of the agency as a law-enforcement officer after March 12, 1994, and who is eligible to participate in the fund.

(12) "Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, the West Virginia Code of State Regulations, or the relevant provisions of both the West Virginia Code and the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(13) "Final average salary" means the average of the highest annual compensation received for employment with the agency, including compensation paid for overtime service, received by the employee during any five calendar years within the employee's last 10 years of service: *Provided*, That annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and § 401(a)(17) of the Internal Revenue Code.

(14) "Fund", "plan", "system" or "retirement system" means the West Virginia State Police Retirement Fund created and established by this article.

(15) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(16) "Law-enforcement officer" means an individual employed or otherwise engaged in either a public or private position which involves the rendition of services relating to enforcement of federal, state or local laws for the protection of public or private safety, including, but not limited to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any other law-enforcement position which requires certification, but excluding positions held by elected sheriffs or appointed chiefs of police whose duties are purely administrative in nature.

(17) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the

member's physical or mental health, or both, by a physician selected or approved by the board.

(18) "Member" means any person who has contributions standing to his or her credit in the fund and who has not yet entered into retirement status.

(19) "Month of service" means each month for which an employee is paid or entitled to payment for at least one hour of service for which contributions were remitted to the fund. These months shall be credited to the member for the calendar year in which the duties are performed.

(20) "Partially disabled" means an employee's inability, on a probable permanent basis, to perform the essential duties of a law-enforcement officer by reason of any medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months, but which impairment does not preclude the employee from engaging in other types of nonlaw-enforcement employment.

(21) "Physical or mental impairment" means an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.

(22) "Plan year" means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(23) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by § 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(24) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

(25) "Retirant" or "retiree" means any member who commences an annuity payable by the retirement system.

(26) "Salary" means the compensation of an employee, excluding any overtime payments.

(27) "Surviving spouse" means the person to whom the member or retirant was legally married at the time of the member's or retirant's death and who survived the member or retirant.

(28) "Totally disabled" means an employee's probable permanent inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subdivision, an employee is totally disabled only if his or her physical or mental impairments are so severe that he or she is not only unable to perform his or her previous work as an employee of the agency, but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the employee lives; (B) a specific job vacancy exists; or (C) the employee would be hired if he or she applied for work.

(29) "Years of service" means the months of service acquired by a member while in active employment with the agency divided by 12. Years of service shall be calculated in years and fraction of a year from the date of active employment of the member with the agency through the date of termination of employment or retirement from the agency. If a member returns to active employment with the agency following a previous termination of employment with the agency and the member has not received a refund of contributions plus interest for the previous employment under §15-2A-8 of this code, service shall be calculated separately for each period of continuous employment and years of service shall be the total service for all periods of employment. Years of service shall exclude any periods of employment with the agency for which a refund of contributions plus interest has been paid to the member unless the employee repays the previous withdrawal, as provided in §15-2A-8 of this code, to reinstate the years of service.

§15-2A-6b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's interest and take precedence over any inconsistent provisions of this retirement system. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of § 401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of §1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under §401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee

under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §15-2A-2 of this code; or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §15-2A-2 of this code; or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

§15-2A-6e. State police reemployment.

(a) Notwithstanding any provision of this article to the contrary, a retirant who becomes reemployed by the agency after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the retirement system. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or the agency fails to comply with subsection (b) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement; provided further that the board may take any actions necessary or appropriate in accordance with the provisions of §15-2A-23 of this code to recover such annuity payments so that an in-service distribution is not deemed to have been made.

(b) Prior to any retirant subsequently becoming employed by the agency, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis, the agency shall notify the board and the retirant, in writing, if and when any such potential employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of such employment, the agency shall notify the board, in writing, of the retirant's subsequent employment. The retirement board may also require of retirants and the agency such reports, forms and verifications as it deems necessary to ensure that a bona fide separation from service has occurred.

CHAPTER 16. PUBLIC HEALTH.

**ARTICLE 5V. EMERGENCY MEDICAL SERVICES
RETIREMENT SYSTEM ACT.**

§16-5V-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member two and six-tenths percent per year of the member's final average salary for the first 20 years of credited service. Additionally, two percent per year for 21 through 25 years and one and one-half percent per year for each year over 25 years will be credited with a maximum benefit of 67 percent. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §16-5V-12 of this code.

(1) The board may, upon the recommendation of the board's actuary, increase the employees' contribution rate to 10 and five-tenths percent should the funding of the plan not reach 70 percent funded by July 1, 2012. The board shall decrease the contribution rate to eight and one-half percent once the plan funding reaches the 70 percent support objective as of any later actuarial valuation date.

(2) Upon reaching the 75 percent actuarial funded level, as of an actuarial valuation date, the board shall increase the two and six-tenths percent to two and three-quarter percent for the first 20 years of credited service. The maximum benefit will also be increased from 67 percent to 90 percent.

(3) For 911 personnel with assets transferred pursuant to §16-5V-6d of this code who did not elect to pay back higher past contributions with interest, "accrued benefit" means, on behalf of the member, two percent per year of the member's final average salary for all credited service that was credited as a result of transferred assets. Additionally, two and three-quarter percent for the first 20 years of new credited service earned from date of membership in this plan will be credited. Additionally, two percent per year for 21 through 25 years of new credited service earned from date of membership in this plan and one and one-half percent per year for each year over 25 years earned from date of membership in this plan will be credited. A maximum benefit of 90 percent of a member's final average salary may be paid. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §16-5V-12 of this code.

(4) For 911 personnel with assets transferred pursuant to §16-5V-6d of this code who did elect to pay back higher past contributions, with interest, for eligible 911 service credit, "accrued benefit" means on behalf of the member two percent per year of the member's final average salary for all non-911 credited service that was credited as a result of transferred assets. Additionally, two and three-quarter percent for the first 20 years of 911 credited service will be credited. Additionally, two percent per year for 21 through 25 years of 911 credited service and one and one-half percent per year for each year over 25 years of 911 credited service will be credited. A maximum benefit of 90 percent of a member's final average salary may be paid. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §16-5V-12 of this code.

(b) "Accumulated contributions" means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

(c) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article.

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of § 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under § 414(h)(2) of the Internal Revenue Code and less reimbursements

or other expense allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and § 401(a)(17) of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the month for which an annuity is payable after submission of a retirement application. For purposes of this subsection, if retirement income payments commence after the normal retirement age, "retirement" means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member's normal retirement age and after completing proper written application for retirement on an application supplied by the board.

(h) "Board" means the Consolidated Public Retirement Board.

(i) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with any participating public employer in the system for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with a participating employer. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary, or leased employee basis.

(j) "Contributing service" or "contributory service" means service rendered by a member while employed by a participating public employer for which the member made contributions to the plan. Contributory service that was transferred in full from the Public Employees Retirement System will qualify as contributory service in this plan.

(k) "County commission or political subdivision" has the meaning ascribed to it in this code.

(l) "County firefighter" means an individual employed in full-time employment as a firefighter with a county commission.

(m) "Covered employment" means: (1) Employment as a full-time emergency medical technician, emergency medical technician/paramedic, or emergency medical services/registered nurse, and the active performance of the duties required of emergency medical services officers; or (2) employment as a full-time employee of a county 911 public safety answering point; or (3) employment as a full-time county firefighter; or (4) the period of time during which active duties are not performed but disability benefits are received under this article; or (5) concurrent employment by an emergency medical services officer, 911 personnel, or county firefighter in a job or jobs in addition to his or her employment as an emergency medical services officer, 911 personnel, or county firefighter where the secondary employment requires the emergency medical services officer, 911 personnel, or county firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That the emergency medical services officer, 911 personnel, or county firefighter contributes to the fund created in this article the amount specified as the member's contribution in §16-5V-8 of this code.

(n) "Credited service" means the sum of a member's years of service, active military duty, disability service, service transferred from the Public Employees Retirement System and accrued annual and sick leave service.

(o) "Dependent child" means either:

(1) An unmarried person under age eighteen who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age 23:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in paragraph (A), (B), or (C), subdivision (1) of this subsection.

(p) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(q) "Disability service" means service received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(r) "Early retirement age" means age 45 or over and completion of 20 years of contributory service.

(s) "Effective date" means January 1, 2008.

(t) "Emergency medical services officer" means an individual employed by the state, county or other political subdivision as a medical professional who is qualified to respond to medical emergencies, aids the sick and injured and arranges or transports to medical facilities, as defined by the West Virginia Office of Emergency Medical Services. This definition is construed to include employed ambulance providers and other services such as law enforcement, rescue, or fire department personnel who primarily perform these functions and are not provided any other credited service benefits or retirement plans. These persons may hold the rank of emergency medical technician/basic, emergency medical technician/paramedic, emergency medical services/registered nurse, or others as defined by the West Virginia

Office of Emergency Medical Services and the Consolidated Public Retirement Board.

(u) "Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, the West Virginia Code of State Rules, or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(v) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then "final average salary" means the average of the monthly salary determined paid to the member during that period as determined under §16-5V-19 of this code multiplied by 12. Final average salary does not include any lump sum payment for unused, accrued leave of any kind or character.

(w) "Full-time employment" means permanent employment of an employee by a participating public employer in a position which normally requires 12 months per year service and requires at least 1,040 hours per year service in that position.

(x) "Fund" means the West Virginia Emergency Medical Services Retirement Fund created by this article.

(y) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year, but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §16-5V-19 or §16-5V-20 of this code; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission or political subdivision, irrespective of mitigation of damages. The same hours of service shall not be credited both under subdivision (1) or subdivision (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement, or payment is made.

(z) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

(aa) "Member" means either: (1) A person first hired as an emergency medical services officer by an employer which is a participating public employer of the Emergency Medical Services Retirement System after the effective date of this article, as defined in subsection (s) of this section; or (2) an emergency medical services officer of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to the effective date and who elects to become a member pursuant to this article; or (3) a person first hired by a county 911 public safety answering center after the participating public employer elects to participate in the Emergency Medical Services Retirement System; or (4) a county firefighter hired on or after June 10, 2022; or (5) a county firefighter of an employer which is a

participating public employer of the Public Employees Retirement System first hired prior to June 10, 2022, and who elects to become a member pursuant to §16-5V-6a of this code; or (6) a person first hired by a county 911 public safety answering center prior to July 1, 2022, and who elects to become a member pursuant to §16-5V-6c of this code. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(bb) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

(cc) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments, he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(dd) "Normal retirement age" means the first to occur of the following:

(1) Attainment of age 50 years and the completion of 20 or more years of regular contributory service, excluding active military duty, disability service, and accrued annual and sick leave service;

(2) While still in covered employment, attainment of at least age 50 years and when the sum of current age plus regular contributory years of service equals or exceeds 70 years;

(3) While still in covered employment, attainment of at least age 60 years and completion of 10 years of regular contributory service; or

(4) Attainment of age 62 years and completion of five or more years of regular contributory service.

(ee) "Participating public employer" means: (1) Any county commission, political subdivision, or county 911 public safety

answering point in the state which has elected to cover its emergency medical services officers or 911 personnel, as defined in this article, under the West Virginia Emergency Medical Services Retirement System; or (2) any county commission who employs county firefighters.

(ff) "Plan" means the West Virginia Emergency Medical Services Retirement System established by this article.

(gg) "Plan year" means the 12-month period commencing on January 1 of any designated year and ending the following December 31.

(hh) "Political subdivision" means a county, city, or town in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns: *Provided*, That any public corporation established under §7-15-4 of this code is considered a political subdivision solely for the purposes of this article.

(ii) "Public Employees Retirement System" means the West Virginia Public Employees Retirement System created by West Virginia Code.

(jj) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(kk) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

(ll) "Retirant" means any member who commences an annuity payable by the plan.

(mm) "Retire" or "retirement" means a member's withdrawal from the employ of a participating public employer and the commencement of an annuity by the plan.

(nn) "Retirement income payments" means the monthly retirement income payments payable under the plan.

(oo) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(pp) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(qq) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

For purposes of this subsection:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as an emergency medical services officer, 911 personnel, or county firefighter but

also cannot, considering his or her age, education, and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological, or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.

(rr) "Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

Hours of Service	Years of Service Credited
Less than 500	0
500 to 999	1/3
1000 to 1499	2/3
1500 or more	1

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years

of service for any time period during which he or she received disability payments under §16-5V-19 or §16-5V-20 of this code. Except as specifically excluded, years of service include covered employment prior to the effective date.

Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to §16-5V-18 of this code or §5-10-30 of this code shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section §16-5V-18 of this code or has, prior to the effective date, made the repayment pursuant to §5-10-18 of this code.

(ss) "911 personnel" means an individual employed in full-time employment with a county 911 public safety answering point.

§16-5V-13. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this plan. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the contrary, the payment of benefits under this article shall be determined and made in accordance with §401(a)(9) of the Internal Revenue Code and federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of §401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of §1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the plan to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the

required beginning date, in accordance with regulations prescribed under §401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under §401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this plan which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the plan has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the plan is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §16-5V-2 of this code; or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member

would have attained the applicable age as set forth in the definition of required beginning date provided in §16-5V-2 of this code; or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

§16-5V-35. Return to covered employment by retirant.

(a) Subject to the provisions of subsection (b) of this section, the annuity of any member who retires under the provisions of this article and who resumes service in covered employment shall be suspended while the member continues in covered employment. If there has been a bona fide separation from service upon retirement, the monthly annuity payment for the month in which the service resumes shall be pro-rated to the date of commencement of service, and the member shall again become a contributing member during resumption of service. At the conclusion of resumed service in covered employment the member shall have his or her annuity recalculated to take into account the entirety of service in covered employment.

(b) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by a participating public employer after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the plan. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or the participating public employer fails to comply with subsection (c) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement. The board may take any actions necessary or appropriate in accordance with the provisions of §16-5V-8a to recover such annuity payments so that an in-service distribution is not deemed to have been made.

(c) Prior to any retirant subsequently becoming reemployed by a participating public employer, including on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis, the participating public employer shall notify the board and

the retirant, in writing, if and when any such potential employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of such employment, the participating public employer shall notify the board, in writing, of the retirant's subsequent employment. The retirement board may also require of retirants and the participating public employer such reports, forms and verifications as it deems necessary to ensure that a bona fide separation from service upon retirement has occurred.

(d) Any retirant who retired under the early retirement provisions of §16-5V-16 of this code, and is subsequently reemployed in covered employment pursuant to this section, and who again retires shall have his or her retirement annuity recalculated as if he or she were retiring at an age calculated by adding his or her original early retirement age to the number of years and months during which he or she was reemployed and contributing to the plan. In the event the artificially determined age, as determined in accordance with the preceding sentence, exceeds 60, the board shall not make any reduction for early retirement.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

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

"Accumulated contributions" means all deposits and all deductions from the gross salary of a contributor plus regular interest.

"Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member.

"Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum

benefit requirements of Section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

"Annuities" means the annual retirement payments for life granted beneficiaries in accordance with this article.

"Average final salary" means the average of the five highest fiscal year salaries earned as a member within the last 15 fiscal years of total service credit, including military service as provided in this article, or if total service is less than 15 years, the average annual salary for the period on which contributions were made: *Provided*, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and § 401(a)(17) of the Internal Revenue Code.

"Beneficiary" means the recipient of annuity payments made under the retirement system.

"Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with the employer or any participating employer in the system for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with a participating employer. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis.

"Contributor" means a member of the retirement system who has an account in the Teachers Accumulation Fund.

"Deposit" means a voluntary payment to his or her account by a member.

"Electing charter school" means a public charter school established pursuant to §18-5G-1 *et seq.* of this code which has elected to participate in this retirement system as permitted in the

definitions of "Nonteaching member" and "Teacher member" in this section.

"Employer" means the agency of and within the state which has employed or employs a member, a county board of education which has employed or employs a member, or an electing charter school which has employed or employs a member. "Participating public employer" or "participating employer" means "employer" unless the context clearly requires otherwise.

"Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, or the West Virginia Code of State Regulations, or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

"Employment term" means employment for at least 10 months, a month being defined as 20 employment days.

"Gross salary" means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the work was done. Gross salary also includes retroactive payments made to a member to correct a clerical error, or made pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member's rights to employment or wages, with all retroactive salary payments to be allocated to and considered paid in the periods in which the work was or would have been done. Gross salary does not include lump sum payments for bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

"Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

"Member" means any person who has accumulated contributions standing to his or her credit in the State Teachers Retirement System. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of membership pursuant to §18-7A-13 of this code.

"Members of the administrative staff of the public schools" means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

"Members of the extension staff of the public schools" means every agricultural agent, boys and girls club agent, and every member of the agricultural extension staff whose work is not primarily stenographic, clerical, or secretarial.

"New entrant" means a teacher who is not a present teacher.

"Nonteaching member" means any person, except a teacher member, who is regularly employed for full-time service by: (A) Any county board of education or educational services cooperative; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for Community and Technical College Education; (E) a governing board, as defined in §18B-1-2 of this code; or (F) a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the retirement systems under this article and §18-7B-1 *et seq.* of this code, subject to §18-7B-7a of this code: *Provided*, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education, or a

governing board commences on or after July 1, 1991, is not considered a nonteaching member.

"Plan year" means the 12-month period commencing on July 1 and ending the following June 30 of any designated year.

"Present member" means a present teacher or nonteacher who is a member of the retirement system.

"Present teacher" means any person who was a teacher within the 35 years beginning July 1, 1934, and whose membership in the retirement system is currently active.

"Prior service" means all service as a teacher completed prior to July 1, 1941, and all service of a present member who was employed as a teacher and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.

"Public schools" means all publicly supported schools, including colleges and universities, in this state. Unless the context clearly requires otherwise, "public school" may not include a public charter school which is not an "electing charter school" as defined herein.

"Refund beneficiary" means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

"Regular interest" means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

"Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

"Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

"Retirant" means any member who commences an annuity payable by the retirement system.

"Retirement board" means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

"Retirement system" means the State Teachers Retirement System established by this article.

"Teacher member" means the following persons, if regularly employed for full-time service: (A) Any person employed by a public school for instructional service in the public schools of West Virginia; (B) principals employed by a public school; (C) librarians employed by a public school; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent

performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education, or the State Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and Rehabilitation, the Division of Health, or the Division of Human Services; (K) an employee of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; (L) employees of an educational services cooperative who are performing services of an educational nature; (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the State Teachers Retirement System provided in this article; and (N) any person employed for instructional service or as a principal or librarian by a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the retirement systems under this article and §18-7B-1 *et seq.* of this code.

"Total service" means all service as a teacher or nonteacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

Age more than 70 years shall be considered to be 70 years.

§18-7A-13a. Resumption of service by retirants.

(a) For the purpose of this section, reemployment of a retirant as a teacher or nonteacher may in no way impair the retirant's eligibility for a prior service pension or any other benefit provided by this article, except as provided in subsection (f) of this section.

(b) Retirants who qualified for an annuity because of age or service may not receive prior service allowance from the retirement board when employed as a teacher or nonteacher and when

regularly employed by a public school. The payment of the allowance shall be discontinued on the first day of the month within which the employment begins and shall be resumed on the first day of the month succeeding the month within which the employment ceases. The annuity paid the retirant on first retirement resulting from the Teachers' Retirement System Fund shall continue throughout the public-school service and thereafter according to the option selected by the retirant upon first retirement.

(c) Retirants who qualified for an annuity because of disability may receive no further retirement payments if the retirement board finds that the disability of the retirant no longer exists; payment shall be discontinued on the first day of the month within which the finding is made. If the retirant returns to service as a teacher or nonteacher, he or she shall contribute to the Teachers' Retirement System Fund as a member of the system. His or her prior service eligibility, if any, shall not be impaired because of his or her disability retirement. Upon subsequent retirement, he or she shall receive credit for all contributory experience, anything to the contrary in this article notwithstanding.

(d) Notwithstanding any provision of this code to the contrary, a person who retires under the system provided by this article may subsequently become employed on either a full-time basis, part-time basis, or contract basis by any institution of higher education without any loss of retirement annuity or retirement benefits if the person's retirement commences between the effective date of the enactment of this section in 2002 and December 31, 2002: *Provided*, That the person may not be eligible to participate in any other state retirement system provided by this code.

(e) The retirement board may require of the retirants and their employers such reports, forms and verifications as it deems necessary to effectuate the provisions of this section and to ensure that a bona fide separation from service upon retirement has occurred.

(f) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by a participating employer after the effective date of his or her retirement must have a bona fide

separation from service upon retirement to be eligible for an annuity payable under the system. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or his or her employer fails to comply with subsection (e) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement; provided further that the board may take any actions necessary or appropriate in accordance with the provisions of §18-7A-14c of this code to recover such annuity payments so that an in-service distribution is not deemed to have been made.

(g) Prior to any retirant subsequently becoming employed with an employer on a permanent (regularly employed for full-time service or part-time service), substitute, per diem, leased employee or temporary basis, the employer shall notify the retirement board and the retirant, in writing, when the retirant's potential permanent, substitute, per diem, leased employee or temporary employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of either permanent, substitute, per diem, leased employee or temporary employment, the employer shall notify the retirement board, in writing, of the retirant's subsequent employment.

§18-7A-28b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this retirement system. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with §401(a)(9) of the Internal Revenue Code and the regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of §401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of §1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable

context in §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under §401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under §401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this retirement system which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §18-7A-3 of this code; or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §18-7A-3 of this code; or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

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

"Annual addition" means, for purposes of the limitations under Section 415(c) of the Internal Revenue Code, the sum credited to a member's account for any limitation year of: (A) Employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cash-outs or contributions as described in §415(k)(3) of the Internal Revenue Code, rollover contributions and picked-up employee contributions to a defined benefit plan may not be treated as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1.

"Annuity account" or "annuity" means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends, or other accumulations credited on behalf of the member.

"Compensation" means the full compensation actually received by members for service whether or not a part of the compensation is received from other funds, federal or otherwise,

than those provided by the state or its subdivisions: *Provided*, That annual compensation for determining contributions during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and §401(a)(17) of the Internal Revenue Code: *Provided, however*, That solely for purposes of applying the limitations of §415 of the Internal Revenue Code to any annual addition, "compensation" has the meaning given it in §18-7B-13(d) of this code.

"Consolidated board" or "board" means the Consolidated Public Retirement Board created and established pursuant to §5-10D-1 *et seq.* of this code.

"Defined contribution system" or "system" means the Teachers' Defined Contribution Retirement System created and established by this article.

"Electing charter school" means a public charter school established pursuant to §18-5G-1 *et seq.* of this code which has elected to participate in this retirement system as permitted in the definition of "Member" or "employee" in this section.

"Employer" means the agency of and within the State of West Virginia which has employed or employs a member, a county board of education which has employed or employs a member, or an electing charter school which has employed or employs a member. "Participating public employer" or "participating employer" means "employer" unless the context clearly requires otherwise.

"Employer contribution" means an amount deposited into the member's individual annuity account on a periodic basis coinciding with the employee's regular pay period by an employer from its own funds.

"Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, the West Virginia Code of State Regulations, or the relevant provisions of both the West Virginia Code and of the West

Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

"Employment term" means employment for at least 10 months in any plan year with a month being defined as 20 employment days.

"Existing employer" means any employer who employed or employs a member of the system.

"Existing retirement system" means the State Teachers Retirement System established in §18-7A-1 *et seq.* of this code.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

"Member" or "employee" means the following persons, if regularly employed for full-time service: (A) Any person employed by a public school for instructional service in the public schools of West Virginia; (B) principals employed by a public school; (C) librarians employed by a public school; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, an electing charter school, or the State Department of Education, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and the Department of Human Services; (K) any person who is regularly employed for full-time service by any county board of education, electing charter school, educational services

cooperative, or the State Board of Education; (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers' Defined Contribution Retirement System established by this article; and (N) any person employed by a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the retirement systems under this article, subject to §18-7B-7a and §18-7A-1 *et seq.* of this code.

"Member contribution" means an amount reduced from the employee's regular pay periods and deposited into the member's individual annuity account within the Teachers' Defined Contribution Retirement System.

"Permanent, total disability" means a mental or physical incapacity requiring absence from employment service for at least six months: *Provided*, That the incapacity is shown by an examination by a physician or physicians selected by the board: *Provided, however*, That for employees hired on or after July 1, 2005, "permanent, total disability" means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness.

"Plan year" means the 12-month period commencing on July 1 of any designated year and ending on the following June 30.

"Public schools" means all publicly supported schools, including normal schools, colleges, and universities, in this state. Unless the context clearly requires otherwise, "public school" shall not include a public charter school which is not an "electing charter school" as defined herein.

"Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

"Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

"Retirement" means a member's withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement.

"Year of employment service" means employment for at least 10 months, with a month being defined as 20 employment days: *Provided*, That no more than one year of service may be accumulated in any 12-month period.

§18-7B-12a. Federal minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this defined contribution system. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in this system to the contrary, the

payment of benefits under this article shall be determined and made in accordance with §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of §401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of § 1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the defined contribution system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under §401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary subject to the provisions of subsection (g) of this section: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under §401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this retirement system which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire

interest in the system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death (subject to the provisions of subsection (g) of this section).

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary (subject to the provisions of subsection (g) of this section), commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §18-7B-2 of this code; or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining

whether any portion of the distribution is an eligible rollover distribution (subject to the provisions of subsection (g) of this section, if applicable): *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §18-7B-2 of this code; or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

(f) For purposes of this section, any amount paid to a child of a member will be treated as if it had been paid to the surviving spouse of the member if the remaining amount becomes payable to the surviving spouse when the child reaches the age of majority.

(g) The provisions of this subsection will apply to distributions with respect to members who die on or after January 1, 2022, and to the designated beneficiaries of members who die prior to January 1, 2022, as described in subdivision (2) of this subsection. This subsection will not apply to qualified annuities described in SECURE Act §401(b)(4)(B)[P.L. 116-94, Div. O].

(1) *10-Year Rule.* — If the distributee of a deceased member's account is a designated beneficiary who is not an "Eligible Designated Beneficiary," then the system will distribute the member's vested account in full no later than December 31 of the 10th year following the year of the member's death.

(2) *Beneficiary Death.* — If an Eligible Designated Beneficiary dies before receiving distribution of the beneficiary's entire interest in the member's account, the system will distribute the remaining interest in full no later than December 31 of the 10th year following the year of the Eligible Designated Beneficiary's death. Similarly, if a member died before January 1, 2022, the limitations of this subsection (g) shall apply to distributions to the beneficiary of the member's designated beneficiary.

(3) *Eligible Designated Beneficiary.* — An individual is an "Eligible Designated Beneficiary" of a member if the individual qualifies as a designated beneficiary under § 401(a)(9)(E) of the Internal Revenue Code and is (1) the member's spouse, (2) the member's child who has not reached the age of majority, as defined for purposes of § 401(a)(9)(F) of the Internal Revenue Code, (3) an individual not more than 10 years younger than the member, (4) a disabled individual, as defined in § 72(m)(7) of the Internal Revenue Code, or (5) an individual who has been certified to be chronically ill, as defined in § 7702B(c)(2) of the Internal Revenue Code, for a reasonably lengthy period, or indefinitely. Certain trusts may be treated as Eligible Designated Beneficiaries pursuant to § 401(a)(9)(H)(iv) and (v) of the Internal Revenue Code. When a child of the member reaches the age of majority, the system will distribute the child's account in full no later than 10 years after that date.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 18. WEST VIRGINIA DIVISION OF NATURAL RESOURCES POLICE OFFICER RETIREMENT SYSTEM.

§20-18-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the member's final average salary multiplied by the member's years of credited service: *Provided*, That members who retire after July 1, 2025, shall have an accrued benefit of two and one-half percent of the member's final average salary multiplied by the member's years of credited service. A member's accrued benefit may not exceed the limits of §415 of the Internal Revenue Code and is subject to the provisions of §20-18-13 of this code.

(b) "Accumulated contributions" means the sum of all amounts deducted from the annual compensation of a member or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code, either pursuant to §20-18-8(a) or §5-10-29 of this code as a result of covered employment together with regular interest on the deducted amounts.

(c) "Active member" means a member who is active and contributing to the plan.

(d) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(e) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of §415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(f) "Annual compensation" means the wages paid to the member during covered employment within the meaning of §3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under §414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation, and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and §401(a)(17) of the Internal Revenue Code.

(g) "Annual leave service" means accrued annual leave.

(h) "Annuity starting date" means the first day of the first calendar month following receipt of the retirement application by the board or the required beginning date, if earlier: *Provided*, That the member has ceased covered employment and reached normal retirement age.

(i) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

(j) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

(k) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with the Division of Natural Resources for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with the division. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis.

(l) "Covered employment" means either: (1) Employment as a Natural Resources Police Officer and the active performance of the

duties required of a Natural Resources Police Officer; (2) the period of time which active duties are not performed but disability benefits are received under §20-18-21 or §20-18-22 of this code; or (3) concurrent employment by a Natural Resources Police Officer in a job or jobs in addition to his or her employment as a Natural Resources Police Officer where the secondary employment requires the Natural Resources Police Officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the Natural Resources Police Officer contributes to the fund created in §20-18-7 of this code the amount specified as the Natural Resource Police Officer's contribution in §20-18-8 of this code.

(m) "Credited service" means the sum of a member's years of service, active military duty, disability service, eligible annual and sick leave service.

(n) "Dependent child" means either:

(1) An unmarried person under age 18 who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age 23:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in subparagraph (A), (B), or (C), paragraph (1) of this subdivision.

(o) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for Federal Income Tax purposes at the time of the member's death.

(p) "Director" means Director of the Division of Natural Resources.

(q) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under §20-18-21 or §20-18-22 of this code.

(r) "Division of Natural Resources" or "division" means the West Virginia Division of Natural Resources.

(s) "Effective date" means January 2, 2021.

(t) "Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(u) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under §20-18-21 or §20-18-22 of this code then "final average salary" means the average of the monthly salary determined paid to the member during that period determined as if the disability first commenced after the effective date of this article with monthly compensation equal to that average monthly compensation which the member

was receiving in the plan year prior to the initial disability multiplied by 12.

(v) "Fund" means the West Virginia Natural Resources Police Officer Retirement Fund created pursuant to §20-18-7 of this code.

(w) "Hour of service" means:

(1) Each hour for which a member is paid;

(2) Each hour for which a member is paid but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof, and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §20-18-21 or §20-18-22 of this code; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the Division of Natural Resources, irrespective of mitigation of damages. The same hours of service may not be credited both under this subdivision and subdivision (1) or (2) of this subsection. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains rather than the plan year in which the award, agreement, or payment is made.

(x) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

(y) "Member" means a person first hired as a Natural Resources Police Officer, as defined in subsection (aa) of this section, on or after January 2, 2021, or a Natural Resources Police Officer first hired prior to the effective date and who elects to become a member pursuant to § 20-18-6 of this code. A member

shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited or until cessation of membership pursuant to §20-18-6 of this code.

(z) "Monthly salary" means the portion of a member's gross annual compensation which is paid to him or her per month.

(aa) "Natural Resources Police Officer" means any person regularly employed in the service of the division as a law-enforcement officer on or after the effective date of this article, and who is eligible to participate in the fund. The term shall not include Emergency Natural Resources Police Officers as defined in §20-7-1(c) of this code, Special Natural Resources Police Officers as defined in §20-7-1(d) of this code, Forestry Special Natural Resources Police Officers as defined in §20-7-1(e) of this code, or Federal Law Enforcement Officer as defined in §20-7-1b of this code.

(bb) "Normal form" means a monthly annuity which is one-twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary or beneficiaries shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(cc) "Normal retirement age" means the first to occur of the following: (1) Attainment of age 55 years and the completion of 15 or more years of service; (2) while still in covered employment, attainment of at least age 55 years, and when the sum of current age plus years of service equals or exceeds 70 years; or (3) attainment of at least age 62 years, and completion of 10 years of service: *Provided*, That any member shall in qualifying for retirement pursuant to this article have 10 or more years of service, all of which years shall be actual, contributory ones.

(dd) "Partially disabled" means a member's inability to engage in the duties of a Natural Resources Police Officer by reason of any medically determinable physical or mental impairment that can be

expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent June 30, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(ee) "Plan" means the West Virginia Natural Resources Police Officers Retirement System established by this article.

(ff) "Plan year" means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(gg) "Public Employees Retirement System" means the West Virginia Public Employees Retirement System created by §5-10-1 *et seq.* of this code.

(hh) "Qualified public safety employee" means any employee of the division who provides police protection, fire-fighting services, or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by § 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(ii) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(jj) "Required beginning date" means April 1 of the calendar year following the later of: (1) the calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of § 401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

(kk) "Retirant" means any member who commences an annuity payable by the retirement system.

(ll) "Retire" or "retirement" means a member's termination from the employ of a participating public employer and the commencement of an annuity by the plan.

(mm) "Retirement income payments" means the annual retirement income payments payable under the plan.

(nn) "Substantial gainful employment" or "gainful employment" means employment in which an individual may earn up to an amount that is determined by the United States Social Security Administration as substantial gainful activity and still receive total disability benefits.

(oo) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(pp) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subdivision:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is

not only unable to perform his or her previous work as a Natural Resources Police Officer but also cannot, considering his or her age, education, and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological, or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. A member's receipt of Social Security disability benefits creates a rebuttable presumption that the member is totally disabled for purposes of this plan. Substantial gainful employment rebuts the presumption of total disability.

(qq) *Year of service.* — A member shall, except in his or her first and last years of covered employment, or within the plan year of the effective date, be credited with year of service credit, based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

Hours of Service	Years of Service Credited
Less than 500	0
500 to 999	1/3
1,000 to 1,499	2/3
1,500 or more	1

During a member's first and last years of covered employment or within the plan year of the effective date, the member shall be credited with one-twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §20-18-21 or §20-18-22 of this code. Except as specifically excluded, years of service include covered

employment prior to the effective date. Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to §20-18-20 or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to §20-18-20 of this code or had prior to the effective date made the repayment pursuant to §5-10-18 of this code.

§20-18-14. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this plan. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the contrary, the payment of benefits under this article shall be determined and made in accordance with §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of §401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of §1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the plan to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under §401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if

the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under §401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this retirement plan which satisfies the MDIB regulations. Benefit payments under this section may not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the plan has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §20-18-2 of this code; or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election may not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §20-18-2 of this code; or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

§20-18-30. Return to covered employment by retired member.

(a) Subject to the provisions of subsection (b) of this section, the annuity of any member who retires under the provisions of this article and who resumes service in covered employment shall be suspended while the member continues in covered employment. If there has been a bona fide separation from service upon retirement, the monthly annuity payment for the month in which the service resumes shall be prorated to the date of commencement of service, and the member shall again become a contributing member during resumption of service. At the conclusion of resumed service in covered employment the member shall have his or her annuity recalculated to take into account the entirety of service in covered employment.

(b) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by the division after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the retirement system. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or the division fails to comply with subsection (c) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement. The board may take any actions necessary or appropriate in accordance with the provisions of §20-18-9 to recover such annuity payments so that an in-service distribution is not deemed to have been made.

(c) Prior to any retirant subsequently becoming employed by the division, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis, the division shall notify the board and the retirant, in writing, if and when any such potential employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of such employment, the division shall notify the board, in writing, of the retirant's subsequent employment. The retirement board may also require of retirants and the participating public employer such

reports, forms and verifications as it deems necessary to ensure that a bona fide separation from service upon retirement has occurred.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-1a. Definitions.

(a) Notwithstanding any other provision of this code to the contrary, as used in this article, the term "judge", "judge of any court of record", or "judge of any court of record of this state" means, refers to, and includes judges of the several family courts, circuit courts, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals.

(b) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(c) "Beneficiary" means any person, except a member, who is entitled to an annuity or other benefit payable by the retirement system.

(d) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

(e) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with the Supreme Court for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with the Supreme Court. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a

permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis.

(f) "Employer error" means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(g) "Final average salary" means the average of the highest 36 consecutive months' compensation received by the member as a judge of any court of record of this state.

(h) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

(i) "Member" means a judge participating in this system.

(j) "Plan year" means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(k) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the

Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

(l) "Retirant" means any member who commences an annuity payable by the plan.

(m) "Retirement system" or "system" means the Judges' Retirement System created and established by this article. Notwithstanding any other provision of law to the contrary, the provisions of this article are applicable only to family court judges, circuit judges, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals in the manner specified in this article.

§51-9-10. Services of senior judges and justices.

(a) The Legislature finds that:

(1) Section seven, article VIII of the Constitution of West Virginia expressly requires the Legislature to fix judicial salaries by statute, providing that: "[j]ustices, judges and magistrates shall receive the salaries fixed by law".

(2) Occasionally, circumstances may require the extended assignment of senior judges and justices, necessitating the Legislature to prescribe such circumstances when the limitations on compensation of senior judges and justices receiving retirement benefits may be exceeded.

(b) The Legislature recognizes and acknowledges the authority of the West Virginia Supreme Court of Appeals to recall retired circuit court judges, family court judges, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals for temporary assignment and to create a panel of such senior judges and justices to serve in certain circumstances including, but not limited to, serving temporarily in the event of a protracted illness or medical condition, lengthy suspension, or other unfilled vacancy; serving temporarily in a circuit to assist with an excess of pending matters identified by the administrative director through statistical analysis; mentoring or assisting a sitting judge as directed by the administrative director; serving temporarily in a

circuit in the event of a recusal or disqualification of a judge or justice; or presiding over cases as a member of the mass litigation or business court: *Provided*, That extended assignment of retired judges and justices must not be utilized in such a way as to threaten the qualified status of the Judges' Retirement System under applicable provisions of the Internal Revenue Code, including Treasury Regulation §1.401(a)-1(b)(1) requiring that a qualified plan must be established primarily to provide payment of definitely determinable benefits to its employees after retirement or attainment of normal retirement age.

(c) Senior intermediate court judges, circuit court judges, and justices recalled and assigned to service shall receive per diem compensation set by the Supreme Court of Appeals, but not to exceed \$430 for each day actually served: *Provided*, That the combined total of per diem compensation and retirement benefits paid to a senior judge or justice during a single calendar year may not exceed the annual salary of a sitting circuit judge, except as set forth in subsection (d) of this section.

(d) Notwithstanding subsection (c) of this section, for purposes of maintaining judicial efficacy and continuity in judicial decision making, a senior judge or justice may continue to receive per diem compensation after the combined total of per diem compensation and retirement benefits paid to the senior judge or justice during that calendar year exceeds the annual salary of a sitting circuit judge if the Chief Justice of the Supreme Court of Appeals enters an administrative order certifying there are certain extraordinary circumstances involving the necessary absence of a sitting judicial officer because of a protracted illness or medical condition, or a lengthy suspension which necessitate the extended assignment of the senior judge or justice. Immediately upon entering such an order, the Chief Justice shall submit copies of the order to the State Auditor and the State Treasurer.

(e) In addition to the per diem compensation authorized by this section, senior judges and justices recalled to service may be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

(f) Senior family court judges recalled and assigned to service shall receive per diem compensation set by the Supreme Court of Appeals, but not to exceed \$325 for each day actually served: *Provided*, That the combined total per diem compensation and retirement benefits paid to a senior family court judge during a single calendar year may not exceed the annual salary of a sitting family court judge, except as set forth in subsection (d) of this section. In addition to the per diem compensation authorized by this section, senior family court judges recalled to service may be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

(g) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by the Supreme Court after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the retirement system. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or the participating public employer fails to comply with subsection (h) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement. The board may take any actions necessary or appropriate in accordance with the provisions of § 51-9-18 to recover such annuity payments so that an in-service distribution is not deemed to have been made.

(h) Prior to any retirant subsequently becoming reemployed by the Supreme Court, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis, the Supreme Court shall notify the board and the retirant, in writing, if and when any such potential employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of such employment, the participating public employer shall notify the board, in writing, of the retirant's subsequent employment. The retirement board may also require of retirants and the Supreme Court such reports, forms and verifications as it deems necessary to ensure that a bona fide separation from service from retirement has occurred.

§51-9-12b. Federal minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiaries' interest and take precedence over any inconsistent provisions of this retirement system. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of §401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of §1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under §401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as

rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §51-9-1a of this code; or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the

retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however,* That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §51-9-1a of this code; or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.



CHAPTER 200

(Com. Sub. for S. B. 715 - By Senator Oliverio)

[Passed April 7, 2025; in effect from passage]

[Approved by the Governor on April 24, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding a new section, designated §5-10D-15, relating to personally identifiable information of a member, retirant, beneficiary, or alternate payee of a retirement system administered by the Consolidated Public Retirement Board being confidential and exempt from disclosure.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-15. Confidential information exempt from disclosure.

Due to the increased risk of fraud and personal identity theft, all information contained in the records maintained by the Consolidated Public Retirement Board for all retirement systems administered pursuant to this article that would tend to disclose personally identifiable information of a member, retirant, beneficiary, or alternate payee are confidential and exempt from disclosure under the provisions of §29B-1-1 *et seq.* of this code. This information includes, without limitation, Social Security numbers, account numbers, dates of birth, addresses, telephone numbers, e-mail addresses, medical or disability information, direct deposit information, and any other personally identifiable information. Members, retirants, beneficiaries, alternate payees, or persons authorized by them, are permitted access to their own information.

CHAPTER 201

(S. B. 716 - By Senator Oliverio)

[Passed April 7, 2025; in effect from passage]

[Approved by the Governor on April 24, 2025.]

AN ACT to amend and reenact §8-22A-33a of the Code of West Virginia, 1931, as amended, relating to failure to pay the required contribution and interest payment for any police officer or firefighter who transferred from the Public Employees Retirement System to the Municipal Police Officers and Firefighters Retirement System.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-33a. Second special authorization for municipal police or firefighters hired after July 1, 2015.

(a) Notwithstanding any provision of this code to the contrary, any municipality or municipal subdivision that employs individuals as members of paid police departments or paid fire departments and whose current police officers or firefighters are participating in the Public Employees Retirement System may elect, as provided in same manner as provided in §8-22A-28(a) of this code, to become a participating public employer in the plan and thereby include its police officers and firefighters in the membership of the plan subject to the restrictions provided in this section.

(b) The municipality or municipal subdivision may elect to include only police officers or firefighters who have been hired on

or after July 1, 2015, to become members of the plan. Police officers or firefighters hired before July 1, 2015, will remain members of the Public Employees Retirement System.

(c) The municipality or municipal subdivision must make its election on or prior to July 1, 2025.

(d) Once a municipality or municipal subdivision makes its election to become a participating public employer pursuant to this section, all police officers or firefighters hired by the municipality or municipal subdivision after the date of election shall be members of the plan: *Provided*, That police officers or firefighters hired by the municipality or municipal subdivision on or after July 1, 2015, who are members of the Public Employees Retirement System, may choose to become a member of the plan by notifying the municipality or municipal subdivision on a form provided by the Consolidated Public Retirement Board: *Provided, however*, That he or she make this decision within 90 days of the municipality or municipal subdivision's decision to participate in the plan. A municipality or municipal subdivision making an election to become a participating public employer pursuant to this section that has hired any police officer or firefighter on or after July 1, 2015, shall notify each police officer or firefighter hired on or after July 1, 2015, of its election to become a participating public employer within 30 days of making the election. This notice shall include instructions as to how a police officer or firefighter may make notification to the municipality or municipal subdivision of his or her decision to become a member in the plan. The municipality or municipal subdivision shall notify the Consolidated Public Retirement Board in writing of any police officer or firefighter hired after July 1, 2015, who has decided to become a member of the plan and terminate his or her membership in the Public Employees Retirement System within 30 days of notification by the police officer or firefighter on forms provided by the Consolidated Public Retirement System.

(e) Notwithstanding any other provision of the code to the contrary, any police officer or firefighter hired by a participating public employer on or after July 1, 2015, who chooses pursuant to this section to be a member of the plan, shall be a member of the

plan upon acceptance by the Consolidated Public Retirement Board of the notification by the municipality required by this section.

(1) The Consolidated Public Retirement Board shall transfer assets and service credit earned on or after July 1, 2015, from the Public Employees Retirement System Trust Fund into the West Virginia Municipal Police Officers and Firefighters Retirement Fund for those police officers or firefighters who elect to be a member of the plan and were members in the Public Employees Retirement System no later than 60 days from receipt of notification by the municipality or municipal subdivision of the police officer or firefighter's election to become a member. The amount of service credit recognized by the plan for the transferring employees shall be the service credit transferred and recognized by the Public Employees Retirement System.

(2) The amount of assets to be transferred for each police officer or firefighter shall be computed as of the actuarial valuation date preceding the notification to the Consolidated Public Retirement Board by the municipality or municipal subdivision of the police officer or firefighter's election to become a member and updated with seven and one-half percent annual interest to the date of the actual asset transfer. For purposes of this section, the actuarial valuation date is the most recent actuarial valuation of the Public Employees Retirement System approved by the Consolidated Public Retirement Board. The market value of the assets of the transferring employees in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred, the Consolidated Public Retirement Board shall:

(A) Compute the market value of the Public Employees Retirement System assets using the actuarial valuation date;

(B) Compute the actuarial accrued liabilities for all Public Employees Retirement System retirees, beneficiaries, disabled retirees, and terminated inactive members using the actuarial valuation date:

(C) Compute the market value of active member assets in the Public Employees Retirement System as of the actuarial valuation date by reducing the assets value under paragraph (A) of this subdivision by the inactive liabilities under paragraph (B) of this subdivision;

(D) Compute the actuarial accrued liability for all active Public Employees Retirement System members using the actuarial valuation date immediately preceding the computation date;

(E) Compute the funded percentage of the active members' actuarial accrued liabilities under the Public Employees Retirement System as of the actuarial valuation date by dividing the active members' market value of assets under paragraph (C) of this subdivision by the active members' actuarial accrued liabilities under paragraph (D) of this subsection;

(F) Compute the actuarial accrued liabilities under the Public Employees Retirement System as of the actuarial valuation date for active employees transferring to the plan;

(G) Determine the assets to be transferred from the Public Employees Retirement System to the plan by multiplying the active members' funded percentage determined under paragraph (E) of this subdivision by the transferring active members' actuarial accrued liabilities under the Public Employees Retirement System under paragraph (F) of this subdivision and adjusting the asset transfer amount by interest at seven and five-tenths percent for the period from the calculation date of July 1 through the first day of the month in which the asset transfer is to be completed.

(3) Any police officer or firefighter who elects to become a member of the plan must also pay to the plan a four percent contribution no later than June 30, 2027. The contribution shall be calculated as four percent of the member's total earnings for which assets are transferred, plus interest of seven and one-half percent accumulated from the date of the police officer's or firefighter's initial participation in the Public Employees Retirement System through the calculation date. Installment payments may be made over no more than a 24-month period plus seven and one-half

percent interest shall accrue on the outstanding balance due from the calculation date until paid in full. Any police officer or firefighter who elects to become a member of the plan but fails to timely pay the required four percent contribution and interest will have all years of service in the plan transferred to the Public Employees Retirement System no later than December 31, 2027. The assets previously transferred to the plan shall be returned to the Public Employees Retirement System, in addition to the employee and employer contribution amounts that would have been paid had the member not elected to transfer, plus interest of seven and one-half percent per annum. Any remaining excess employee contribution amount paid to the plan since the date of transfer shall remain in the plan until the employee terminates employment with the municipality.

(4) Once an employee transfers from the Public Employees Retirement System to the plan, the Public Employees Retirement System shall bar any further liability and said transfer will constitute an agreement whereby the transferring employee forever indemnifies and holds harmless the Public Employees Retirement System from providing him or her any form of retirement benefit whatsoever until that employee obtains other employment which would make him or her eligible to reenter the Public Employees Retirement System with no credit whatsoever for the amounts transferred to the plan.



CHAPTER 202

**(Com. Sub. for S. B. 456 - By Senators Smith (Mr. President)
and Woelfel)**

(By Request of the Executive)

[Passed March 11, 2025; in effect 90 days from passage (June 9, 2025)]
[Approved by the Governor on March 12, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding a new article, designated §5-32-1, §5-32-2, §5-32-3, §5-32-4, §5-32-5, §5-32-6, §5-32-7, §5-32-8, and §5-32-9, relating to sex definitions and single-sex spaces; providing purposes and general application; providing findings; creating definitions; establishing a standard of review; clarifying that the article does not authorize certain examinations of minor children; providing that determination of the biological sex of a minor is determined at the minor's time of birth; providing for certain standards applicable to domestic violence shelters, public schools, institutions of higher education, and correctional institutions; clarifying certain sex-based data collection; and providing for severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 32. SEX DEFINITIONS AND PRESERVATION OF SINGLE-SEX SPACES.

§5-32-1. Purpose and general application.

(a) The purpose of this article is to:

(1) Reaffirm the longstanding meaning of sex, male, and female in state law.

(2) Preserve women's restrooms, multiple occupancy restrooms or changing rooms, and sleeping quarters for women in facilities where women have been traditionally afforded privacy and safety from acts of abuse, harassment, sexual assault, and violence committed by men.

(3) Bring clarity, certainty, and uniformity to the laws of the state regarding sex discrimination, privacy, equality of the sexes, and benefits or services specifically provided to men and women.

(b) This article shall apply wherever the state or an instrumentality of the state classifies people on the basis of sex or otherwise defines people as being female or male, women or men, girls or boys.

(c) This article shall not be enforced in any manner inconsistent with or in violation of the ruling in *Grimm v. Gloucester School Board*, 972 F.3d. 586 (4th Cir. 2020). If a decision by the Supreme Court of the United States or by the United States Court of Appeals for the Fourth Circuit overrule or otherwise render the *Grimm* decision ineffective, then the limitations on enforcement imposed by this subsection shall be considered repealed.

§5-32-2. Findings.

(a) Males and females are legally equal, but they are not biologically the same.

(b) Males and females possess unique and immutable biological differences that manifest prior to birth and increase as they age and experience puberty.

(c) These unique and immutable biological differences mean that females and males are not similarly situated in all circumstances and are not interchangeable.

(d) Inconsistencies in court rulings and policy initiatives regarding sex discrimination and common sex-based words have endangered women's rights and resources and have put the

existence of private, single-sex spaces in jeopardy, thereby necessitating clarification of certain terms used in this code.

(e) The hard-earned legal equality between men and women is enshrined in the Fourteenth Amendment to the U.S. Constitution, federal laws including Title IX of the Education Amendments of 1972, and Article III, Section 10 of the West Virginia Constitution.

(f) In describing equality for women under the Fourteenth Amendment, the U.S. Supreme Court has explained that laws and governmental policies may account for the "enduring" physical differences between the sexes as set forth in *United States v. Virginia*, 518 U.S. 515, 533 (1996).

(g) These physical differences include differences in reproductive anatomy, the basis for separate-sex facilities designed to protect the safety and personal privacy of women and girls. Personal privacy is a natural instinct rooted in biological realities, including the facts that males alone have the biological capability to impregnate women and that males are, on average, physically larger and stronger than women. The state should protect spaces where women have been traditionally afforded privacy and safety from acts of abuse, harassment, sexual assault, and violence committed by men, just as the state should protect women and girls' natural desire to avoid exposing their bodies to males with whom they have limited, if any, relationships.

§5-32-3. Definitions of terms used in the code and Code of State Rules.

As used in this code and/or any administrative rules, regulations, or public policies adopted by the state or its instrumentalities:

(1) A "woman" is an adult human of the female sex, and a "man" is an adult human of the male sex.

(2) A "girl" is a human female who is a legal minor, and a "boy" is a human male who is a legal minor: *Provided*, That the use of the term "girl" or "boy" in reference to the participation of a high school-aged individual in a school or extracurricular program in

accordance with the laws of the state shall not be understood to exclude the participation of a student who is legally an adult.

(3) A "mother" is a female parent of a child or children.

(4) A "father" is a male parent of a child or children.

(5) A "female", when this term is used in reference to a natural person, is an individual who naturally has, had, will have through the course of normal development, or would have but for a developmental anomaly, genetic anomaly, or accident, the reproductive system that at some point produces, transports, and utilizes ova for fertilization.

(6) A "male", when this term is used in reference to a natural person, is an individual who naturally has, had, will have through the course of normal development, or would have but for a developmental anomaly, genetic anomaly, or accident, the reproductive system that at some point produces, transports, and utilizes sperm for fertilization.

(7) "Sex", when this term is used to classify or describe a natural person, means the state of being either male or female as observed or clinically verified at birth. There are only two sexes, and every individual is either male or female: *Provided*, That individuals with congenital and medically verifiable "DSD conditions" (sometimes referred to as "differences in sex development", "disorders in sex development", or "intersex conditions") are not members of a third sex and must be accommodated consistent with state and federal law.

(8) "Domestic violence shelter" means a residential service offered by a licensed domestic violence program on a temporary basis, to persons who are victims of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children, as established by §48-26-214 of this code, and that receives funding from the West Virginia Department of Human Services.

(9) "Public school" means any school under the general supervision of the West Virginia Board of Education pursuant to Article XII, Section 2 of the Constitution of West Virginia.

(10) "State institution of higher education" means any university, college, or community and technical college under the jurisdiction of a governing board as defined in §18B-1-2 of this code.

(11) "Multiple occupancy restroom or changing room" means an area designed or designated to be used by more than one individual at the same time and in which one or more individuals may be in various stages of undress in the presence of other individuals. Such term includes, but shall not be limited to, the following:

(A) Restrooms;

(B) Locker rooms; and

(C) Shower rooms.

(12) "Changing area" means an area designed or designated to be used by one or more individuals at the same time and in which one or more individuals may be in various stages of undress. Such term includes, but shall not be limited to, restrooms.

(13) "Sleeping quarters" means a room with more than one bed and in which more than one individual is housed overnight.

§5-32-4. Sex-based protections permitted and standard of review.

Notwithstanding any other provision of law to the contrary, no state or local governmental agency may prohibit distinctions between the sexes with respect to domestic violence shelters, or other accommodation where biology, safety, or privacy are implicated and that result in separate accommodations that are substantially related to the important government interest of protecting the health, safety, and privacy of individuals in such circumstances: *Provided*, That nothing in this article shall be

construed as authorizing an examination of a minor for purposes of determining the minor's biological sex. The biological sex of a minor is determined by reference to the minor's biological sex recorded at the minor's time of birth.

§5-32-5. Safety and privacy in domestic violence shelters.

(a) To ensure the privacy and safety of women in domestic violence shelters, each such shelter shall:

(1) Designate sleeping quarters and multiple occupancy restrooms or changing rooms:

(A) For the exclusive use of females; or

(B) For the exclusive use of males; and

(2) Provide a reasonable accommodation to an individual who is unwilling or unable to use sleeping quarters or a multiple occupancy restroom or changing room designated for such individual's sex.

(A) A reasonable accommodation under this paragraph may include, but shall not necessarily be limited to, allowing such individual to access a single-occupancy sleeping area, restroom, or changing area.

(B) A reasonable accommodation under this paragraph shall not include allowing such individual to access a single-occupancy sleeping area or sleeping quarters, restroom, or changing area that is designated for use by members of the opposite sex while members of the opposite sex of the individual are present or may be present in the single-occupancy sleeping area or sleeping quarters, restroom, or changing area.

(b) This section shall not be construed or applied to prohibit an individual from entering a multiple occupancy restroom or changing room or sleeping quarters designated for the opposite sex when he or she enters such area for one of the following reasons:

(1) For authorized custodial, maintenance, or inspection purposes;

(2) To render medical assistance;

(3) To render assistance by law enforcement;

(4) To provide services or render aid during a natural disaster, a declared emergency, or when necessary to prevent a serious threat to good order or safety; or

(5) For young children, to accompany an adult caretaker.

(c) Nothing in this section shall be construed to prohibit a domestic violence shelter from adopting policies necessary to accommodate persons protected under the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, as amended.

§5-32-6. Safety and privacy in restrooms of public schools and state institutions of higher education.

(a) To ensure the privacy and safety of students, each public school system in this state and each state institution of higher education shall:

(1) Designate multiple occupancy restrooms or changing rooms:

(A) For the exclusive use of females;

(B) For the exclusive use of males; and

(2) Provide a reasonable accommodation to an individual who is unwilling or unable to use a multiple occupancy restroom or changing area designated for such individual's sex.

(A) A reasonable accommodation under this paragraph may include, but shall not necessarily be limited to, allowing such individual to access a single-occupancy restroom or changing area.

(B) A reasonable accommodation under this paragraph shall not include allowing such individual to access a restroom or

changing area that is designated for use by members of the opposite sex while members of the opposite sex of the individual are present or may be present in the restroom or changing area.

(b) A public school that sponsors or supervises an overnight trip involving public school students or state institution of higher education that sponsors or supervises an overnight trip involving students shall ensure that any student attending the overnight trip either:

(1) Shares sleeping quarters with a member or, if necessary, multiple members, of the same sex; or

(2) Is provided single-occupancy sleeping quarters.

Notwithstanding the foregoing, a public school student attending an overnight trip may share sleeping quarters with a member of the opposite sex if the member of the opposite sex is a member of such student's immediate family. Additionally, a state institution of higher education student may share sleeping quarters with a member of the opposite sex if the state institution of higher education student and the person of opposite sex both agree to shared sleeping quarters in advance of the sponsored or supervised overnight trip.

(c) This section shall not be construed or applied to prohibit an individual from entering a multiple occupancy restroom or changing room designated for the opposite sex when he or she enters such area for one of the following reasons:

(1) For authorized custodial, maintenance, or inspection purposes;

(2) To render medical assistance;

(3) To render assistance by law enforcement;

(4) To provide services or render aid during a natural disaster, a declared emergency, or when necessary to prevent a serious threat to good order or safety; or

(5) For young children, to accompany an adult caretaker.

(d) Nothing in this section shall be construed to prohibit a public system or a state institution of higher education from adopting policies necessary to accommodate persons protected under the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, as amended, or the West Virginia Human Rights Act, West Virginia Code §16B-17-1 *et seq.*

§5-32-7. Safety and privacy in correctional institutions.

(a) To ensure the privacy and safety of women in the custody of the Commissioner of the Division of Corrections and Rehabilitation, each institution managed by the Commissioner of Corrections and Rehabilitation shall designate sleeping quarters, multiple occupancy restrooms, and shower facilities:

(1) For the exclusive use of females; or

(2) For the exclusive use of males.

(b) This section shall not be construed or applied to prohibit an individual who is not an inmate from entering sleeping quarters, multiple occupancy restrooms, or shower facilities designated for the opposite sex when he or she enters such area for one of the following reasons:

(1) For authorized custodial, maintenance, or inspection purposes;

(2) To render medical assistance;

(3) To render assistance by law enforcement;

(4) To provide services or render aid during a natural disaster, a declared emergency, or when necessary to prevent a serious threat to good order or safety; or

(5) For the operational needs of the institution.

(c) Nothing in this section shall be construed to prohibit the Division of Corrections and Rehabilitation from adopting policies

necessary to comply with the Prison Rape Elimination Act of 2003, 42 U.S.C §15602, as amended, to accommodate persons protected under the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, as amended, or to comply with any other applicable state or federal law.

§5-32-8. Promoting accuracy in sex-based data collection.

(a) Males and females possess unique and immutable biological differences that can manifest in unique risks, harms, or sex-based discrimination, including crime victimhood, access to pregnancy and nursing-related resources, and substance abuse.

(b) To understand and address sex-based differences particularly, data must be accurately collected on the basis of sex. Failure to do so risks improper identification and alleviation of trends and harms affecting citizens of the state.

(c) Any public school, public school district, state institution of higher education, state agency, or subdivision of the state that directly collects vital statistics related to sex or the categories of male and female for the purpose of complying with anti-discrimination laws or for the purpose of gathering accurate public health, crime, economic, or other data shall identify each natural person who is part of the collected data set as either male or female as defined in this article.

(d) Compliance with this section shall not require the collection of data related to sex unless otherwise required by law, nor shall it prevent the collection of additional data points other than sex.

§5-32-9. Severability.

If any provision of this article or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this article are severable and their application to any person or circumstance shall not be affected thereby.

CHAPTER 203

**(S. B. 537 - By Senators Helton, Fuller, Rucker, Roberts,
Willis, Deeds, and Rose)**

[Passed April 9, 2025; in effect 90 days from passage (July 8, 2025)]
[Approved by the Governor on April 30, 2025.]

AN ACT to amend and reenact §16-66-2 of the Code of West Virginia, 1931, as amended, relating to pregnancy help organizations; and providing approved pregnancy help organizations flexibility to receive funding for various costs.

Be it enacted by the Legislature of West Virginia:

ARTICLE 66. SUPPORT FOR MOTHERS AND BABIES ACT.

§16-66-2. Establishing the West Virginia Mothers and Babies Pregnancy Support Program.

(a) The West Virginia Mothers and Babies Pregnancy Support Program under the Bureau for Public Health is continued.

(b) A pregnancy help organization is eligible to receive funding from the program, subject to meeting the standards defined by the managing agency.

(c) An abortion industry organization may not receive funding from the program.

(d) (1) The program's funds may be distributed to pregnancy help organizations eligible under this article for the following reasons:

(A) Capital expenditures;

(B) Expenditures associated with adding additional services;

(C) Expenditures associated with meeting the requirements established by relevant licensing, accreditation, or standards setting organizations; and

(D) Training expenditures for pregnancy help organization staff and volunteers.

(2) Except as provided in subdivision (1) of this subsection, funds distributed under the program shall be distributed on a fee per service arrangement with a fee per service and hour arrangement as set by the management agency.



CHAPTER 204

**(Com. Sub. for S. B. 710 - By Senators Chapman and
Roberts)**

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]
[Approved by the Governor on April 24, 2025.]

AN ACT to amend and reenact §30-4-3 of the Code of West Virginia, 1931, as amended; and to amend the code by adding a new section, designated §30-4-8b, relating to the practice of dentistry; defining terms; setting forth the requirements for teledentistry licensure or registration; setting forth the standard of care for teledentistry; setting forth the requirements to establish a provider-patient relationship for teledentistry; setting forth exceptions to the provider-patient relationship for teledentistry; setting forth prerequisites to services for teledentistry; setting forth required disclosures for teledentistry; setting forth informed consent for teledentistry; setting forth record-keeping requirements for teledentistry; setting forth patient privacy requirements for teledentistry; setting forth provider competency requirements for teledentistry; requiring rulemaking; setting forth disciplinary proceedings for teledentistry; and setting forth disciplinary procedures teledentistry.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-3. Definitions.

As used in §30-4-1 *et seq.*, §30-4A-1 *et seq.*, and §30-4B-1 *et seq.* of this code, the following words and terms have the following meanings:

"AAOMS" means the American Association of Oral and Maxillofacial Surgeons;

"AAPD" means the American Academy of Pediatric Dentistry;

"ACLS" means advanced cardiac life support;

"ADA" means the American Dental Association;

"AMA" means the American Medical Association;

"ASA" means American Society of Anesthesiologists;

"Anxiolysis/minimal sedation" means removing, eliminating, or decreasing anxiety by the use of a single anxiety or analgesia medication that is administered in an amount consistent with the manufacturer's current recommended dosage for the unsupervised treatment of anxiety, insomnia, or pain, in conjunction with nitrous oxide and oxygen. This does not include multiple dosing or exceeding current normal dosage limits set by the manufacturer for unsupervised use by the patient at home for the treatment of anxiety;

"Approved dental hygiene program" means a program that is approved by the board and is accredited, or its educational standards are deemed by the board to be substantially equivalent to those required by the Commission on Dental Accreditation of the American Dental Association;

"Approved dental school, college, or dental department of a university" means a dental school, college, or dental department of a university that is approved by the board and is accredited, or its educational standards are deemed by the board to be substantially equivalent to those required by the Commission on Dental Accreditation of the American Dental Association;

"Asynchronous transmission" means store and forward technology that allows a provider to transmit a patient's health information to another provider for viewing at a later time;

"Authorize" means that the dentist is giving permission or approval to dental auxiliary personnel to perform delegated procedures in accordance with the dentist's diagnosis and treatment plan;

"BLS" means basic life support;

"Board" means the West Virginia Board of Dentistry;

"Business entity" means any firm, partnership, association, company, corporation, limited partnership, limited liability company, or other entity;

"Central nervous system anesthesia" means an induced, controlled state of unconsciousness or depressed consciousness produced by a pharmacologic method;

"Certificate of qualification" means a certificate authorizing a dentist to practice a specialty;

"CPR" means cardiopulmonary resuscitation;

"Conscious sedation/moderate sedation" means an induced, controlled state of depressed consciousness, produced through the administration of nitrous oxide and oxygen and/or the administration of other agents whether enteral or parenteral, in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command;

"CRNA" means certified registered nurse anesthetist;

"Defibrillator" means an electronic device that applies an electric shock to the heart to restore the normal functional rhythm of a fibrillating, nonfunctional heart and includes an Automatic Electronic Defibrillator (AED);

"Delegated procedures" means those procedures specified by law or by rule of the board and performed by dental auxiliary personnel under the supervision of a licensed dentist;

"Dentist anesthesiologist" means a dentist who is trained in the practice of anesthesiology and has completed an additional approved anesthesia education course;

"Dental anesthesiology" is the specialty of dentistry and discipline of anesthesiology encompassing the art and science of managing pain, anxiety, and overall patient health during dental, oral, maxillofacial, and adjunctive surgical or diagnostic procedures throughout the entire perioperative period. The specialty is dedicated to promoting patient safety as well as access to care for all dental patients, including the very young and patients with special health care needs;

"Dental assistant" means a person qualified by education, training, or experience who aids or assists a dentist in the delivery of patient care in accordance with delegated procedures as specified by the board by rule or who may perform nonclinical duties in the dental office;

"Dental auxiliary personnel" or "auxiliary" means dental hygienists and dental assistants who assist the dentist in the practice of dentistry;

"Dental hygiene" means the performance of educational, preventive, or therapeutic dental services and as further provided in §30-4-11 of this code and legislative rule;

"Dental hygienist" means a person licensed by the board to practice and who provides dental hygiene and other services as specified by the board by rule to patients in the dental office and in a public health setting;

"Dental laboratory" means a business performing dental laboratory services;

"Dental laboratory services" means the fabricating, repairing, or altering of a dental prosthesis;

"Dental laboratory technician" means a person qualified by education, training, or experience who has completed a dental laboratory technology education program and who fabricates,

repairs, or alters a dental prosthesis in accordance with a dentist's work authorization;

"Dental office" means the place where the licensed dentist and dental auxiliary personnel are practicing dentistry;

"Dental prosthesis" means an artificial appliance fabricated to replace one or more teeth or other oral or peri-oral structure in order to restore or alter function or aesthetics;

"Dental public health" is the science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. It is that form of dental practice which considers the community to be the patient rather than any individual. It is concerned with the dental health education of the public, with applied dental research, and with the administration of group dental care programs as well as the prevention and control of dental diseases on a community basis;

"Dentist" means an individual licensed by the board to practice dentistry;

"Dentistry" means the evaluation, diagnosis, prevention, and treatment, of diseases, disorders, and conditions of the oral cavity and the maxillofacial, adjacent, and associated structures and their impact on the human body;

"Direct supervision" means supervision provided by a licensed dentist who is physically present in the dental office or treatment facility when procedures are being performed;

"Distant site" means the location of the site where a teledentistry provider of health care is providing teledentistry services to a patient located at an originating site;

"Emergent care" means treatment of pain, infection, or any other intraoral or perioral condition which presents immediate harm to the well-being of the patient and for which treatment cannot be postponed;

"Endodontics" is the branch of dentistry which is concerned with the morphology, physiology, and pathology of the human dental pulp and periradicular tissues. Its study and practice encompass the basic and clinical sciences including biology of the normal pulp, the etiology, diagnosis, prevention, and treatment of diseases and injuries of the pulp and associated periradicular conditions;

"Facility permit" means a permit for a facility where sedation procedures are used that correspond with the level of anesthesia provided;

"General anesthesia" means an induced, controlled state of unconsciousness in which the patient experiences complete loss of protective reflexes, as evidenced by the inability to independently maintain an airway, the inability to respond purposefully to physical stimulation or the inability to respond purposefully to verbal command;

"Deep conscious sedation/general anesthesia" includes partial loss of protective reflexes while the patient retains the ability to independently and continuously maintain an airway;

"General supervision" means a dentist is not required to be in the office or treatment facility when procedures are being performed, has personally authorized the procedures to be completed, and will evaluate the treatment provided at a future appointment by the dental auxiliary personnel;

"Health care provider BLS/CPR" means health care provider basic life support/cardiopulmonary resuscitation;

"License" means a license to practice dentistry or dental hygiene;

"Licensee" means a person holding a license;

"Mobile dental facility" means any self-contained facility in which dentistry or dental hygiene will be practiced which may be moved, towed, or transported from one location to another;

"Originating site" means the location of the site where a patient is receiving teledentistry services from a provider of health care at a distant site;

"Portable dental unit" means any non-facility in which dental equipment, utilized in the practice of dentistry, is transported to and utilized on a temporary basis in an out-of-office location including, but not limited to, patients' homes, schools, nursing homes, or other institutions;

"Provider" means a dentist, a dental hygienist, or a medical facility as the employer of any person in this definition;

"Public health program" means a program approved by the board or any program administered by: The Department of Health, a health district, or a school district;

"Oral medicine" is the specialty of dentistry responsible for the oral health care of medically complex patients and for the diagnosis and management of medically related disorders or conditions affecting the oral and maxillofacial region;

"Oral pathology" is the specialty of dentistry and discipline of pathology that deals with the nature, identification, and management of diseases affecting the oral and maxillofacial regions. It is a science that investigates the causes, processes, and effects of these diseases. The practice of oral pathology includes research and diagnosis of diseases using clinical, radiographic, microscopic, biochemical, or other examinations;

"Oral and maxillofacial radiology" is the specialty of dentistry and discipline of radiology concerned with the production and interpretation of images and data produced by all modalities of radiant energy that are used for the diagnosis and management of diseases, disorders, and conditions of the oral and maxillofacial region;

"Oral and maxillofacial surgery" is the specialty of dentistry which includes the diagnosis, surgical and adjunctive treatment of diseases, injuries, and defects involving both the functional and

aesthetic aspects of the hard and soft tissues of the oral and maxillofacial region;

"Orofacial pain" is the specialty of dentistry that encompasses the diagnosis, management and treatment of pain disorders of the jaw, mouth, face and associated regions, which specialty is dedicated to the evidenced-based understanding of the underlying pathophysiology, etiology, prevention, and treatment of these disorders and improving access to interdisciplinary patient care. These disorders as they relate to orofacial pain include, but are not limited to, temporomandibular muscle and joint (TMJ) disorders, jaw movement disorders, neuropathic and neurovascular pain disorders, headache, and sleep disorders;

"Orthodontics and dentofacial orthopedics" is the dental specialty that includes the diagnosis, prevention, interception, and correction of malocclusion, as well as neuromuscular and skeletal abnormalities of the developing or mature orofacial structures;

"PALS" means pediatric advanced life support;

"Pediatric dentistry" is an age-defined specialty that provides both primary and comprehensive preventive and therapeutic oral health care for infants and children through adolescence, including those with special health care needs;

"Pediatric patient" means infants and children;

"Periodontics" is that specialty of dentistry which encompasses the prevention, diagnosis, and treatment of diseases of the supporting and surrounding tissues of the teeth or their substitutes and the maintenance of the health, function, and aesthetics of these structures and tissues;

"Physician anesthesiologist" means a physician, medical doctor, or doctor of osteopathy who is specialized in the practice of anesthesiology;

"Prosthodontics" is the dental specialty pertaining to the diagnosis, treatment planning, rehabilitation and maintenance of the oral function, comfort, appearance and health of patients with

clinical conditions associated with missing or deficient teeth and/or oral and maxillofacial tissues using biocompatible substitutes;

"Public health practice" means treatment or procedures in a public health setting which shall be designated by a rule promulgated by the board to require direct, general, or no supervision of a dental hygienist by a dentist;

"Public health setting" means hospitals, schools, correctional facilities, jails, community clinics, long-term care facilities, nursing homes, home health agencies, group homes, state institutions under the Department of Health Facilities, public health facilities, homebound settings, accredited dental hygiene education programs, and any other place designated by the board by rule;

"Qualified monitor" means an individual who by virtue of credentialing and/or training is qualified to check closely and document the status of a patient undergoing anesthesia and observe utilized equipment;

"Relative analgesia/minimal sedation" means an induced, controlled state of minimally depressed consciousness, produced solely by the inhalation of a combination of nitrous oxide and oxygen or single oral premedication without the addition of nitrous oxide and oxygen in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command;

"Specialty" means the practice of a certain branch of dentistry;

"Subcommittee" means West Virginia Board of Dentistry Subcommittee on Anesthesia;

"Teledentistry" means the use of telehealth by a provider who is located at a distant site to facilitate the diagnosis, treatment, education, care management, and self-management of or consultation with a patient who is located at an originating site. The term includes, without limitation:

(1) Real-time interactions between a patient at an originating site and a provider at a distant site;

(2) The asynchronous transmission of medical and dental information concerning a patient from an originating site to a provider at a distant site;

(3) Interaction between a provider at a distant site who is providing dental services to a patient at an originating site and another provider at the originating site; and

(4) Monitoring of a patient at an originating site by a provider at a distant site; and

"Work authorization" means a written order for dental laboratory services which has been issued by a licensed dentist.

§30-4-8b. License or registration requirements to practice teledentistry; rules; and penalties.

(a) A person may not provide dental services through teledentistry to a patient who is located at an originating site in this state unless the person:

(1) Is licensed pursuant to this article or registered pursuant to §30-1-1 *et seq.* of this code to practice dentistry or dental hygiene in this state; and

(2) Possesses and maintains a policy of professional liability insurance which insures the provider against any liability arising from the provision of dental services.

(b) A provider who provides dental services through teledentistry including, without limitation, providing consultation and recommendations for treatment, issuing a prescription, diagnosing, or correcting the position of teeth and using orthodontic appliances shall provide such services in accordance with the same standards of care and professional conduct as when providing those services in person or by other means.

(1) A provider may not:

(A) Provide treatment for any condition based solely on the results of an online questionnaire;

(B) Engage in activity that is outside his or her scope of practice while providing services through teledentistry; or

(C) Delegate to a dental hygienist, dental assistant, dental auxiliary, or any other individual any act or duty through teledentistry that requires the in-person supervision of a licensed or registered dentist or that is otherwise outside such individuals permissible scope of practice.

(c) Except as otherwise provided for in §30-4-8b(d), a provider shall establish a bona fide relationship with a patient before providing services to a patient through teledentistry. A bona fide relationship between a patient and a provider shall exist if the provider has:

(1) Reviewed the patient's relevant history, medical records, diagnostic records, and, if treatment is for the correction of a malposition of teeth, the patient's current radiographic records;

(A) "Current radiographic records" means those radiographs or images taken contemporaneously; and

(B) Occurring with the in-person examination.

(2) Performed an appropriate, in-person, physical examination of the patient for the purpose of diagnosing, assessing, developing a treatment plan, or determining the patient's current medical or dental condition; and

(3) A reasonable expectation that he or she provide in-person follow-up care and treatment to the patient on a regular basis.

(d) Notwithstanding the limitations provided in §30-4-8b(c), a provider may establish a relationship with a patient through teledentistry only:

(1) For the purpose of emergent care;

(2) In connection with a public health program; or

(3) To make an initial diagnosis of a malposition of teeth and a determination of the need for an orthodontic appliance. An initial

diagnosis and determination must be confirmed through an in-person visit and review of the patient's current radiographic records before the patient begins using the orthodontic appliance.

(e) Prior to the provision of services to a patient through teledentistry, a provider shall:

(1) Confirm the identity of the patient;

(2) If the patient is a minor who is not authorized by law to consent to the services, confirm that the parent or legal guardian of the patient is present;

(3) Confirm that the patient is located in a jurisdiction where the provider is licensed or otherwise authorized to practice and document the location of the patient in the record of the patient;

(4) Obtain:

(A) Informed written consent that meets the requirements of §30-4-8b(g) from a patient who is an adult or a minor authorized by law to provide consent; or

(B) Informed written consent that meets the requirements of §30-4-8b(g) from the parent or guardian of a patient who is a minor and is not authorized by law to provide consent; and

(5) Document the informed consent provided pursuant this subsection in the record of the patient.

(f) Prior to providing services through teledentistry and upon the request of a patient to whom services are provided through teledentistry, a provider or any partnership, corporation, or other entity through which a provider provides services shall make available to the patient proof of the identity of the provider, the telephone number of the provider, the address at which the provider practices, the license or registration number of the provider, and any other relevant information concerning the qualifications of the provider, and any other provider who shall be involved in providing the services through teledentistry.

(g) Informed consent to the provision of services through teledentistry requires the patient or his or her parent or guardian to be informed of:

(1) The types of services that will be provided through teledentistry and any limitations on the provision of those services through teledentistry;

(2) The information prescribed by §30-4-8b(f) for each provider who shall provide services through teledentistry;

(3) Precautions to be taken in the event of a technological failure or an emergency; and

(4) Any other information prescribed by legislative rule of the board.

(h) Except in situations requiring emergency treatment, a dentist of record is required for all patients being treated through teledentistry. The dentist of record shall remain primarily responsible for all dental treatment of the patient, regardless of whether treatment has been delegated to a teledentistry provider.

(i) No provider, partnership, corporation, or other entity which provides, or purports to provide teledentistry services or provides a platform, technology, or support services through which teledentistry is provided, may advertise their services unless they employ a provider licensed or registered in this state. Advertisements for teledentistry services must include the following disclaimer, in a conspicuous location, stating the limitations and safety concerns regarding teledentistry:

DISCLAIMER: Orthodontic treatment is a complex biological process that if not done correctly or performed without a thorough examination of the overall health of the teeth and gums could result in the permanent loss of teeth, which may result in additional costs or lifelong dental problems. Teledentistry services are intended to supplement traditional treatment methods and are not intended to replace in-person examinations. It is important to consult with a licensed or registered orthodontist or dentist prior to beginning any treatment.

(j) A provider who provides services through teledentistry shall:

(1) Use communications technology that complies with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191; and

(2) Create a complete record of each encounter with a patient through teledentistry and maintain such records in accordance with applicable federal and state laws and regulations.

(k) (1) A provider who provides services through teledentistry must be adequately familiar with the nature and availability of dental care in the geographical area in which the patient is located to ensure that the patient receives appropriate care during the provision of the services.

(2) If a provider is not able to competently provide services through teledentistry, including, without limitation, because the provider is unable to receive adequate information about the patient, the provider must notify the patient of that fact and:

(A) Provide the services in person;

(B) Request any additional information necessary to competently provide the services through teledentistry; or

(C) Refer the patient to an appropriate licensee or registrant to receive the services in person.

(l) A dentist may only delegate tasks to auxiliaries including, but not limited to, dental hygienists and dental assistants, to the extent permitted by existing law.

(m) A provider who provides services through teledentistry shall refer a patient to the emergency department of a hospital or another provider of acute care in an emergency or any other situation where the provision of acute care is necessary to protect the health and safety of the patient.

(n) The board shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code regulating dental services offered through teledentistry. Those rules shall include:

(1) The issuance of prescriptions through teledentistry, consistent with the limitations in §30-1-26(b)(5) of this code;

(2) The maintenance of records concerning patients to whom services are provided through teledentistry and the protection of the privacy of such patients;

(3) The development of evidence-based standards;

(4) The use of teledentistry for collaboration between:

(A) Providers and the office of a physician, physician assistant, or advanced practice nurse; and

(B) Providers who practice in different specialty areas; and

(5) Interaction between providers using teledentistry including, without limitation:

(A) The supervision of a dental hygienist by a dentist using teledentistry; and

(B) Interaction between different providers who are providing care to the same patient.

(6) Evidence-based standards of practice that shall be used when providing services through teledentistry to ensure the safety of patients, the quality of care, and positive outcomes.

(o) It shall be considered unprofessional conduct to:

(1) Fail to actively involve a patient in decisions concerning his or her treatment;

(2) Require a patient to enter into an agreement that restricts the ability of the patient to submit a complaint to the board, file a lawsuit, join a class action lawsuit, make reports to any

governmental entity, to require the patient to submit to binding arbitration, or to otherwise limit or prohibit the patient from obtaining relief for deficiencies in the treatment or services they have received;

(3) Fail to perform an in-person examination of a patient or fail to review a patient's diagnostic and radiographic images taken concurrently with the in-person visit prior to initiating treatment, except for those situations enumerated in §30-4-8b(d) of this code;

(4) Fail to review diagnostic digital or conventional radiographs for orthodontia before:

(A) Taking any action to correct a malposition of teeth; or

(B) The initial use of an orthodontic appliance;

(5) Delegate to an auxiliary a task or service that is not indicated or permitted by existing law to be performed by that individual; or

(6) Failure to comply with the requirements of §30-4-8b(f) of this code.

(p) In addition to the grounds for disciplinary action authorized by this article, the board may also take disciplinary action against any provider who is found to be practicing teledentistry in violation of any section or has committed any of the acts specified in §30-4-8b(o) of this code.

(r) The process for instituting and conducting disciplinary proceedings against a teledentistry provider pursuant to this act shall be the same process as that contained in the Dental Practice Act for disciplinary actions.

CHAPTER 205

(Com. Sub. for S. B. 810 - By Senators Rucker, Fuller, Taylor, Bartlett, Rose, Roberts, Maynard, Hart, and Helton)

[Passed April 8, 2025; in effect 90 days from passage (July 7, 2025)]
[Approved by the Governor on April 30, 2025.]

AN ACT to amend and reenact §30-7-15 of the Code of West Virginia, 1931, as amended, relating to clarifying the qualifications required for the administration of anesthesia; permitting qualified registered nurse may administer anesthesia in cooperation with certain health care professionals; defining term; providing dentist holding specified permit may cooperate with certified registered nurse anesthetist; limiting liability; setting conditions in which a certified registered nurse anesthetist may perform acts; stating that certified registered nurse anesthetist does not have independent practice; setting forth approved titles; and requiring reporting.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-15. Administration of anesthetics.

(a) A certified registered nurse anesthetist may administer anesthesia in cooperation with a physician, dentist, or podiatrist when providing the anesthesia.

(1) As used in this section, “cooperation” means a process in which the certified registered nurse anesthetist and the physician, dentist, or podiatrist work together as a team with each contributing an area of expertise at their individual and respective levels of education and training. At all times during such cooperation, the

medical or dental care of the patient is directed by the physician, dentist, or podiatrist.

(2) A dentist may cooperate with a certified registered nurse anesthetist under this section only if he or she holds an anesthesia permit pursuant to article §30-4A-1 *et seq.* of this code.

(3) The physician, dentist, or podiatrist is not liable for any act or omission of a certified registered nurse anesthetist who orders or administers anesthetics under this section.

(b) A certified registered nurse anesthetist lawfully may perform acts that determine, prepare, administer, and monitor anesthesia care and anesthesia care-related services if he or she:

(1) Has at any time held a registered professional nursing license under this article; and

(2) Holds a current advanced practice registered nurse license under this article; and

(3) Has completed successfully a nurse anesthetist educational program at a nationally accredited graduate or post-graduate advanced practice registered nurse educational institution; and

(4) Holds current certification by a national certifying body recognized by the Board of Nursing in the advanced practice registered nurse role and population foci appropriate for educational preparation.

(c) A certified registered nurse anesthetist does not have independent practice authority.

(d) A licensed advanced practice registered nurse practicing in the role of certified registered nurse anesthetist may only use the title "certified registered nurse anesthetist", "CRNA", "advanced practice registered nurse", or "APRN".

(e) On or before July 1, 2026, and annually thereafter, the Board of Nursing shall report to the Legislature regarding the implementation and impact of this section. The report shall include:

(1) Any problems or issues that have been reported to the board by hospitals, dental offices, podiatrist offices, ambulatory surgical centers, and all other locations where nurse anesthetists are authorized to practice in the state; and

(2) Any treatment complications resulting from the administration of anesthesia by certified registered nurse anesthetists.

CHAPTER 206

(Com. Sub. for H. B. 2354 - By Delegates Burkhammer, Masters, Pritt, Worrell, Hite, Mazzocchi, Brooks, and Horst)

[Passed March 14, 2025; in effect from passage]
[Approved by the Governor on March 24, 2025.]

AN ACT to amend and reenact §16-7-2 and §16-7-4 of the Code of West Virginia, 1931, as amended, and to amend the code by adding a new section, designated §18-5D-3A, relating to prohibiting certain products that are injurious to health; setting forth criteria considered adulterated; prohibiting certain unsafe food additives in school nutrition programs; providing exceptions; exempting criminal penalties; and setting effective dates.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 7. PURE FOOD AND DRUGS.

§16-7-2. What constitutes adulteration.

Any drug or article of food shall be deemed to be adulterated within the meaning of this article: for the purpose of this article:

(a) In the case of drugs:

(1) If, when sold under or by a name recognized in the United States Pharmacopoeia official at that time, it differs from the standard of strength, quality, or purity laid down therein;

(2) If, when sold under or by a name not recognized in the United States Pharmacopoeia official at the time, but which is found in some other pharmacopoeia or other standard work of

materia medica, it differs materially from the standard of strength, quality, or purity laid down in such work;

(3) If its strength, quality, or purity falls below the professed standard under which it is sold;

(4) If it be an imitation of, or offered for sale under the name of, another article; or

(5) If the contents of the package as originally put up shall have been removed in whole or in part, and other contents shall have been placed in such package, or if the package fails to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, acetanilide, or any derivative or preparation of any such substance contained therein: *Provided*, That nothing in this paragraph shall be construed to apply to the dispensing of prescriptions written by regular licensed practicing physicians, veterinary surgeons, or dentists, and kept on file by the dispensing pharmacist, nor to such drugs as are recognized in the United States Pharmacopoeia and the National Formulary, which are sold under the name by which they are recognized.

(b) In the case of food, drink, confectionery, or condiment:

(1) If any substance or substances have been mixed with it, so as to lower or depreciate or injuriously affect its quality, strength, or purity;

(2) If any inferior or cheaper substance or substances have been substituted wholly or in part for it;

(3) If any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it;

(4) If it is an imitation of, or is sold under the name of, another article;

(5) If it consists wholly or in part of diseased, decomposed, putrid, infected, tainted, or rotten animal or vegetable substance,

whether manufactured or not, or, in the case of milk, if it is the product of a diseased animal;

(6) If it is colored, coated, polished, or powdered, whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is;

(7) If it contains any added substance or ingredients which are poisonous or injurious to the health, including butylated hydroxyanisole, propylparaben, FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, and FD&C Yellow No. 6;

(8) If it is sold under a coined name and does not contain some ingredient suggested by such name or contains only an inconsiderable quantity; or

(9) If the package containing it or any label thereon shall bear any statement regarding it or its composition which shall be false or misleading in any particular: *Provided*, That the provisions of this article do not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food or drink, if each and every package sold or offered for sale is distinctly labeled in words of the English language as mixtures or compounds, with the name and percent of each ingredient therein; the word "compound" or "mixture" shall be printed in type not smaller in either height or width than one half the largest type upon any label on the package, and the formula shall be printed in letters not smaller in either height or width than one fourth the largest type upon any label on the package, and said compound or mixture must not contain any ingredients injurious to the health.

(10) The amendments made to this section during the 2025 regular session of the Legislature shall be effective on January 1, 2028;

§16-7-4. Penalty for adulterating food or drugs, or for manufacturing or selling adulterated food or drugs.

(a) Whoever, by himself or herself or his or her agents, knowingly adulterates or causes to be adulterated any article of

food or drug, or knowingly manufactures for sale, offers for sale, or sells, within this state, any article of food or drug which is adulterated within the meaning of this article, without making the same known to the buyer, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding \$500, or confined in jail not more than one year, or both, in the discretion of the court; and in addition to the penalties hereinbefore provided, he or she shall be adjudged to pay the cost and expense of analyzing such adulterated food or drug, as set forth in the certificate of the person making the analysis, not exceeding \$25 in any one case, which shall be included in the costs of such prosecution and taxed in favor of the state department of health or the West Virginia Board of Pharmacy, as the case may be; and if he or she be a registered pharmacist or assistant pharmacist, his or her name shall be stricken from the register. The adulterated article shall be forfeited and destroyed.

(b) This section does not apply to any person who offers for sale, or sells, within this state, less than \$5,000, in aggregate, of adulterated food, per month, when the food is adulterated by including of butylated hydroxyanisole, propylparaben, FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, or FD&C Yellow No. 6.

CHAPTER 18. EDUCATION.

ARTICLE 5D. WEST VIRGINIA FEED TO ACHIEVE ACT.

§18-5D-3A. Unsafe food additives prohibited.

(a) Effective August 1, 2025, the following food additives shall be deemed unsafe and shall not be permitted as an ingredient in any meal served in a school nutrition program as set forth in this article:

- (1) Red Dye No. 3 (CAS Reg. No. 16423-68-0);
- (2) Red Dye No. 40 (CAS Reg. No. 25956-17-6);
- (3) Yellow Dye No. 5 (CAS Reg. No. 1934-21-0);
- (4) Yellow Dye No. 6 (CAS Reg. No. 2783-94-0);

- (5) Blue Dye No. 1 (CAS Reg. No.3844-45-8);
- (6) Blue Dye No. 2 (CAS Reg. No. 860-22-0); and
- (7) Green Dye No. 3 (CAS Reg. No. 2353-45-9).

(b) An elementary, middle, or high school may permit the sale of food items that do not comply with this section as part of a school fundraising event if the sale of those items takes place off of and away from school premises or the sale of those items takes place on the school premises at least one-half hour after the end of the school day.



CHAPTER 207

(Com. Sub. for S. B. 617 - By Senators Roberts, Azinger, Barrett, Deeds, Fuller, Hart, Helton, Jeffries, Maynard, Morris, Rose, Stuart, Tarr, Thorne, Bartlett, and Willis)

[Passed April 10, 2025; in effect 90 days from passage (July 9, 2025)]
[Approved by the Governor on April 24, 2025.]

AN ACT to amend and reenact §61-13-1, §61-13-2, and §61-13-3 of the Code of West Virginia, 1931, as amended, relating to organized criminal enterprises; amending the findings to include gangs and gang activity; creating a definition of “gang”; adding gang activity to offenses punishable by this section; adding certain qualifying offenses to be subject to the Anti-Organized Criminal Enterprise Act; clarifying that certain offenses are separate and distinct crimes; creating criminal penalties; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. ANTI-ORGANIZED CRIMINAL ENTERPRISE ACT.

§61-13-1. Findings.

(a) The Legislature hereby finds that there is evidence of an increasing incidence of larger scale organized criminal activity and gang activity in various parts of this state and that new statutes are necessary to protect the lives and property of the overwhelming majority of West Virginians who are law-abiding citizens. The evidence presented to the Legislature reflects that persons engaged in larger scale ongoing criminal or gang enterprises are of all ages, multiple racial and ethnic origin, and all pose a rising threat.

(b) The Legislature further finds that there is a tendency among certain of these enterprises to actively recruit, sometimes coercively, people into joining such organizations as well as organized efforts to intimidate witnesses who may be in a position to offer testimony regarding the organized criminal enterprises and that such behavior cannot be tolerated.

(c) The Legislature further finds that lawful use of public nuisance and forfeiture laws can substantially aid in a reduction of larger scale organized criminal enterprises.

(d) The Legislature further finds that criminal statutes tailored to the particular problems represented by such organized criminal enterprises combined with community education and existing alternative sentencing laws can aid in reducing this new threat.

§61-13-2. Definitions.

As used in this article:

(1) "Gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its activities the commission of one or more qualifying offenses, and whose members engage in or have engaged in qualifying offenses.

(2) "Organized criminal enterprise" means a combination of five or more persons engaging over a period of not less than six months in one or more of the qualifying offenses set forth in this section.

(3) "Qualifying offense" means a violation of the felony provisions of §33-41-11 of this code; the provisions of §33-44-1 *et seq.* of this code; the felony provisions of §60A-1-101 *et seq.* of this code; the felony provisions of §61-2-1 *et seq.* of this code; the provisions of §61-3-1, §61-3-2, §61-3-3, §61-3-4, §61-3-5, §61-3-11, §61-3-12, §61-3-13, §61-3-14, §61-3-18, §61-3-19, §61-3-20, §61-3-20a, §61-3-21, §61-3-22, §61-3-22a, §61-3-24, §61-3-24a, §61-3-24b, §61-3-24d, §61-3-44, §61-3-45, §61-3-45a, §61-3-49b, §61-3-54, §61-3-56, §61-3-57 of this code; the felony provisions of §61-3C-1 *et seq.* of this code; the felony provisions of §61-3E-

1 *et seq.* of this code; the felony provisions of §61-4-1 *et seq.* of this code; the provisions of §61-5-1 *et seq.* of this code; the provisions of §61-6-24 of this code; the provisions §61-8-8 of this code; the felony provisions of §61-8A-1 *et seq.* of this code; the felony provisions of §61-8C-1 *et seq.* of this code; the provisions of §61-14-1 *et seq.* of this code; and the provisions of §61-15-2 of this code.

§61-13-3. Offenses.

(a) Any person who knowingly and willfully becomes a member of a gang or an organized criminal enterprise, and who knowingly promotes, furthers, or assists in the commission of any qualifying offense himself or herself or in combination with another member of an organized criminal enterprise or gang, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not more than 10 years or fined not more than \$25,000, or both imprisoned and fined. The offense set forth in this subsection is separate and distinct from that of any qualifying offense and may be punished separately.

(b) Any person who knowingly solicits, invites, recruits, encourages, or causes another to become a member of an organized criminal enterprise or gang, or to assist members of an organized criminal enterprise or gang, to aid or assist in the commission of a qualifying offense by one or more members of an organized criminal enterprise or gang, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not more than five years or fined not more than \$10,000, or both imprisoned and fined. The offense set forth in this subsection is separate and distinct from that of any qualifying offense and may be punished separately.

(c) Any person who shall, by threats, menaces, or otherwise, intimidate, or attempt to intimidate, a witness for the state in any prosecution under the provisions of this article, for the purpose of preventing the attendance of the witness at the trial of the case or to change testimony, or shall in any way or manner prevent, or attempt to prevent, the attendance of any witness at the trial, shall be guilty of a felony and, upon conviction, shall be confined not more than 10 years.

CHAPTER 208

**(Com. Sub. for H. B. 2067 - By Delegates Coop-Gonzalez,
Horst, Hillenbrand, Linville, Phillips, Foggin, T. Clark,
Anders, McGeehan, Kimble, and Steele)**

[Passed April 8, 2025; in effect 90 days from passage (July 7, 2025)]
[Approved by the Governor on April 28, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-7C-1, §61-7C-2, §61-7C-3, and §61-7C-4; all relating to the creation of the West Virginia Firearms Marketing Clarification Act; providing for a short title; providing for definitions; providing limitations on negligent marketing claims; and creating a predicate exception limitation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7C. WEST VIRGINIA FIREARMS MARKETING CLARIFICATION ACT.

§61-7C-1. Short title.

This article shall be known and may be cited as the "West Virginia Firearms Marketing Clarification Act."

§61-7C-2. Definitions.

For the purposes of this article:

"Firearm" means any weapon which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive, as defined in 18 U.S.C. § 921(a)(3);

"Manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for sale or distribution;

"Negligent marketing" means any advertising, promotion, or marketing practice by a manufacturer or seller that directly poses a foreseeable and substantial risk of harm to the purchaser or specific identifiable individuals;

"PLCAA" means the Protection of Lawful Commerce in Arms Act of 2005, 15 U.S.C. 105, *et seq.*; and

"Seller" means any person engaged in the business of selling firearms or ammunition at wholesale or retail.

§61-7C-3. Limitations on negligent marketing claims.

(a) A person may bring a negligent marketing claim against a manufacturer or seller of firearms or ammunition only if all of the following conditions are met:

(1) The marketing practice directly targeted individuals who are legally prohibited from owning firearms;

(2) The marketing practice encouraged or facilitated the unlawful use of firearms;

(3) There is direct cause and substantial proximate cause between the marketing practice and the harm suffered by the plaintiff; and

(4) The marketing practice violated a state or federal statute explicitly regulating the sale or marketing of firearms or ammunition in a manner that constitutes a willful and knowing violation of the law.

(b) If these conditions are not met, the court must, upon motion, summarily dismiss the action or dismiss any parties who are improperly joined.

§61-7C-4. Predicate exception limitation; construction.

(a) The predicate exception under the PLCAA may not be interpreted broadly. A claim may proceed only if the specifically cited statute was violated in the following manner:

- (1) The statute explicitly regulates firearms or ammunition;
 - (2) The statute provides clear, concrete requirements that the manufacturer or seller failed to meet; and
 - (3) The violation of the statute was a proximate cause of the harm in question.
- (b) General state consumer protection laws or public nuisance laws may not be considered statutes "applicable to the sale or marketing" of firearms or ammunition for the purposes of the predicate exception.
- (c) The predicate exception may not be interpreted broadly to result in general consumer marketing statutes circumventing the PLCAA.

CHAPTER 209

(H. B. 2742 - By Delegates Riley, Linville, D. Cannon, and Eldridge)

[Passed April 11, 2025; in effect from passage]

[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §24-2-11 of the Code of West Virginia, 1931, as amended, relating to creating limited waiver from certificate of public convenience and necessity requirement for certain water or sewer services projects.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-11. Requirements for certificate of public convenience and necessity.

(a) A public utility, person, or corporation other than a political subdivision of the state providing water or sewer services and having at least 4,500 customers and annual gross combined revenues of \$3 million or more may not begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in §24-2-1 of this code, nor apply for, nor obtain any franchise, license, or permit from any municipality or other governmental agency, except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the Public Service Commission a certificate of public convenience and necessity authorizing the construction franchise, license, or permit: *Provided*, That the requirement to obtain a certificate of public convenience and necessity shall be waived for projects that have been reviewed and

determined to be technically feasible and approved by the Infrastructure and Jobs Development Council.

(b) Upon the filing of any application for the certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of convenience and necessity: *Provided*, That the commission, after it gives proper notice and if no substantial protest is received within 30 days after the notice is given, may waive formal hearing on the application. Notice shall be given by publication which shall state that a formal hearing may be waived in the absence of substantial protest, made within 30 days, to the application. The notice shall be published as a Class I legal advertisement in compliance with §59-3-1 *et seq.* of this code. The publication area shall be the proposed area of operation.

(c) Any public utility, person, or corporation subject to the provisions of this section other than a political subdivision of the state providing water and/or sewer services having at least 4,500 customers and combined annual gross revenue of \$3 million dollars or more shall give the commission at least 30 days' notice of the filing of any application for a certificate of public convenience and necessity under this section: *Provided*, That the commission may modify or waive the 30-day notice requirement and shall waive the 30-day notice requirement for projects approved by the Infrastructure and Jobs Development Council.

(d) The commission shall render its final decision on any application filed under the provisions of this section or §24-2-11a of this code within 270 days of the filing of the application and within 90 days after final submission of any such application for decision following a hearing: *Provided*, That if the application is for authority to construct a water and sewer project and the projected total cost is less than \$10 million, the commission shall render its final decision within 225 days of the filing of the application.

(e) The commission shall render its final decision on any application filed under the provisions of this section that has received the approval of the Infrastructure and Jobs Development

Council pursuant to §31-15A-1 *et seq.* of this code within 180 days after filing of the application: *Provided*, That if a substantial protest is received within 30 days after the notice is provided pursuant to subsection (b) of this section, the commission shall render its final decision within 270 days or 225 days of the filing of the application, whichever is applicable as determined in subsection (d) of this section.

(f) If the projected total cost of a project which is the subject of an application filed pursuant to this section or §24-2-11a of this code is greater than \$50 million, the commission shall render its final decision on any such application filed under the provisions of this section or §24-2-11a of this code within 400 days of the filing of the application and within 90 days after final submission of any such application for decision after a hearing.

(g) If a decision is not rendered within the time frames established in this section, the commission shall issue a certificate of convenience and necessity as applied for in the application.

(h) The commission shall prescribe rules it considers proper for the enforcement of the provisions of this section; and, in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant.

(i) Pursuant to the requirements of this section, the commission may issue a certificate of public convenience and necessity to any intrastate pipeline, interstate pipeline, or local distribution company for the transportation in intrastate commerce of natural gas used by any person for one or more uses, as defined by rule, by the commission in the case of:

(1) Natural gas sold by a producer, pipeline, or other seller to the person; or

(2) Natural gas produced by the person.

(j) A public utility, including a public service district, which has received a certificate of public convenience and necessity after July 8, 2005, from the commission and has been approved by the Infrastructure and Jobs Development Council is not required to,

and cannot be compelled to, reopen the proceeding if the cost of the project changes but the change does not affect the rates established for the project.

(k) Any public utility, person, or corporation proposing any electric power project that requires a certificate under this section is not required to obtain the certificate before applying for or obtaining any franchise, license, or permit from any municipality or other governmental agency.

(l) Water or sewer utilities that are political subdivisions of the state and having at least 4,500 customers and combined gross revenues of \$3 million dollars or more desiring to pursue construction projects that are not in the ordinary course of business shall provide adequate prior public notice of the contemplated construction and proposed changes to rates, fees, and charges, if any, as a result of the construction to both current customers and those persons who will be affected by the proposed construction as follows:

(1) Adequate prior public notice of the contemplated construction by causing a notice of intent to pursue a project that is not in the ordinary course of business to be specified on the monthly billing statement of the customers of the utility for the month immediately preceding the month in which an ordinance or resolution approving the proposed construction and proposed changes to rates, fees, and charges, if any, is to be before the governing body for the public hearing on the ordinance or resolution approving the proposed construction and proposed changes to rates, fees, and charges, if any.

(2) Adequate prior public notice of the contemplated construction by causing to be published as a Class I legal advertisement of the proposed public hearing on the ordinance or resolution approving the proposed construction and proposed changes to rates, fees, and charges, if any, in compliance with §59-3-1 *et seq.* of this code. The publication area for publication shall be all territory served by the political subdivision. If the political subdivision provides service in more than one county, publication

shall be made in a newspaper of general circulation in each county that the political subdivision provides service.

(3) The public notice of the proposed construction shall state the scope of the proposed construction; a summary of the current rates, fees, and charges, and proposed changes to said rates, fees, and charges, if any; the date, time, and place of the public hearing on the ordinance or resolution approving the proposed construction and proposed changes to rates, fees, and charges, if any; and the place or places within the political subdivision where the ordinance or resolution approving the proposed construction and proposed changes to rates, fees, and charges, if any, may be inspected by the public. A reasonable number of copies of the ordinance or resolution shall be kept at the place or places and be made available for public inspection. The notice shall also advise that interested parties may appear at the public hearing before the political subdivision and be heard with respect to the proposed construction and the proposed rates, fees, and charges, if any.

(4) The ordinance or resolution on the proposed construction and the proposed rates, fees, and charges shall be read at two meetings of the governing body with at least two weeks intervening between each meeting. The public hearing may be conducted prior to, or at, the meeting of the governing body at which the ordinance or resolution approving the proposed construction is considered on second reading.

(5) Enactment or adoption of the ordinance or resolution approving the proposed construction and the proposed rates, fees, and charges shall follow an affirmative vote of the governing body and the approved rates shall go into effect no sooner than 45 days following the action of the governing body. If the political subdivision proposes rates that will go into effect prior to the completion of construction of the proposed project, the 45-day waiting period may be waived by public vote of the governing body only if the political subdivision finds and declares the political subdivision to be in financial distress such that the 45-day waiting period would be detrimental to the ability of the political subdivision to deliver continued and compliant public services: *Provided, That, if the political subdivision is a public service*

district, in no event may the rate become effective prior to the date that the county commission has entered an order approving or modifying the action of the public service district board.

(6) Rates, fees, and charges approved by an affirmative vote of the public service district board shall be forwarded in writing to the county commission with the authority to appoint the members of the public service board of the public service district. The county commission shall, within 45 days of receipt of the proposed rates, fees, and charges, take action to approve, modify, or reject the proposed rates, fees, and charges, in its sole discretion. If, after 45 days, the county commission has not taken final action to approve, modify, or reject the proposed rates, fees, and charges, the proposed rates, fees, and charges, as presented to the county commission, shall be effective with no further action by the board or county commission. In any event this 45-day period may be extended by official action of both the board proposing the rates, fees, and charges and the appointing county commission.

(7) The county commission shall provide notice to the public by a Class I legal advertisement of the proposed action, in compliance with §59-3-1 *et seq.* of this code, of the meeting where it shall consider the proposed increases in rates, fees, and charges no later than one week prior to the meeting date.

(8) A public service district, or a customer aggrieved by the changed rates or charges who presents to the circuit court a petition signed by 25 percent of the customers served by the public service district when dissatisfied by the approval, modification, or rejection by the county commission of the proposed rates, fees, and charges under the provisions of this subsection may file a complaint regarding the rates, fees, and charges resulting from the action of, or failure to act by, the county commission in the circuit court of the county in which the county commission sits: *Provided*, That any complaint or petition filed hereunder shall be filed within 30 days of the county commission's final action approving, modifying, or rejecting the rates, fees, and charges, or the expiration of the 45-day period from the receipt by the county commission, in writing, of the rates, fees, and charges approved by resolution of the board, without final action by the county

commission to approve, modify, or reject the rates, fees, and charges, and the circuit court shall resolve said complaint: *Provided, however,* That the rates, fees, and charges so fixed by the county commission, or those adopted by the district upon which the county commission failed to act, shall remain in full force and effect until set aside, altered, or amended by the circuit court in an order to be followed in the future.

CHAPTER 210

(Com. Sub. for S. B. 102 - By Senator Weld)

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]
[Approved by the Governor on April 24, 2025.]

AN ACT to amend and reenact §39-1-2 of the Code of West Virginia, 1931, as amended, relating to modifying the form of deeds; and requiring that any quitclaim deed without consideration or any deed effecting the transfer of real property where the value of the property transferred is \$100 or less for which no excise tax is paid is signed by the grantee or proved by two witnesses as to the grantee before a clerk of the county commission, with certain exceptions for transfers on death and between family members.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. AUTHENTICATION AND RECORD OF WRITINGS.

§39-1-2. Conditions under which county clerk shall admit deeds, contacts, etc., to record.

(a) The clerk of the county commission of any county in which any deed, contract, power of attorney, or other writing is to be, or may be, recorded, shall admit the same to record in the clerk's office, as to any person whose name is signed thereto, when it shall have been acknowledged by such person or proved by two witnesses as to such person before such clerk of the county commission.

(b) Notwithstanding the requirements of subsection (a) of this section:

(1) The clerk shall not admit to record any contract, deed, deed of trust, mortgage, or other instrument that secures the payment of any debt, unless such contract, deed, deed of trust, mortgage, or other instrument sets forth therein who, at the time of the execution and delivery thereof, is the beneficial owner of the debt secured thereby, and where he resides: *Provided*, That in the case of a mortgage or a deed of trust securing an issue of negotiable notes or bonds exceeding five in number and payable to bearer, it shall not be necessary that the mortgage or deed of trust show who are the beneficial owners of such notes or bonds, but in such case such mortgage or deed of trust shall show the name and address of the person or corporation with or by whom the notes or bonds have been, or are to be, first negotiated.

(2) The clerk shall not admit to record any quitclaim deed without consideration or any deed effecting the transfer of real property where the value of the property transferred is \$100 or less for which no excise tax on the privilege of transferring real property on such instrument is paid under §11-22-1 *et seq.* of this code unless the instrument has been signed by the grantee thereon and acknowledged by the grantee or proved by two witnesses as to the grantee before such clerk of the county commission: *Provided*, That the clerk shall admit to record any transfer on death deed made pursuant to §39-12-1 *et seq.* of this code, and transfers between husband and wife, transfers between parent and child, transfers between parent and child and his or her spouse, transfers between grandparent and grandchild, or transfers between grandparent and grandchild and his or her spouse, which are without consideration or for consideration of less than \$2,000, that have not been signed by the grantee thereon. Any deed recorded in violation of this section is void and no interest transfers to grantee under such recorded deed.

CHAPTER 211

**(Com. Sub. for S. B. 275 - By Senators Oliverio, Thorne, Rose,
and Deeds)**

[April 12, 2025; in effect from passage]
[Approved by the Governor on April 24, 2025.]

AN ACT to amend and reenact §18A-2-5 of the Code of West Virginia, 1931, as amended, relating to removing the requirement for cooks and custodians to have a high school diploma or equivalent as a condition of employment by a county board of education.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-5. Employment of service personnel; limitation.

The board may employ such service personnel, including substitutes, as is deemed necessary for meeting the needs of the county school system: *Provided*, That the board may not employ a number of such personnel whose minimum monthly salary under §18A-4-8a of this code is specified as pay grade "H", which number exceeds the number employed by the board on March 1, 1988.

Effective July 1, 1988, a county board shall not employ for the first time any person who has not obtained a high school diploma or general educational development certificate (GED) or who is not enrolled in an approved adult education course by the date of employment in preparation for obtaining a GED: *Provided*, That such employment is contingent upon continued enrollment or successful completion of the GED program: *Provided, however*, That this paragraph shall not apply to school bus drivers who are

21 years of age or older: *Provided further*, That this paragraph shall not apply to cooks or custodians.

Before entering upon their duties service personnel shall execute with the board a written contract which shall be in the following form:

"COUNTY BOARD OF EDUCATION

SERVICE PERSONNEL CONTRACT OF EMPLOYMENT

THIS (Probationary or Continuing) CONTRACT OF EMPLOYMENT, made and entered into this _____ day of _____, 20 ____, by and between THE BOARD OF EDUCATION OF THE COUNTY OF _____, a corporation, hereinafter called the 'Board,' and (Name and Social Security Number of Employee), of (Mailing Address), hereinafter called the 'Employee.'

WITNESSETH, that whereas, at a lawful meeting of the Board of Education of the County of _____ held at the offices of said Board, in the City of _____, _____ County, West Virginia, on the _____ day of _____, 20 ____, the Employee was duly hired and appointed for employment as a (Job Classification) at (Place of Assignment) for the school year commencing _____ for the employment term and at the salary and upon the terms hereinafter set out.

NOW, THEREFORE, pursuant to said employment, Board and Employee mutually agree as follows:

(1) The Employee is employed by the Board as a (Job Classification) at (Place of Assignment) for the school year or remaining part thereof commencing _____, 20 _____. The period of employment is _____ days at an annual salary of \$ _____ at the rate of \$ _____ per month.

(2) The Board hereby certifies that the Employee's employment has been duly approved by the Board and will be a matter of the Board's minute records.

(3) The services to be performed by the Employee shall be such services as are prescribed for the job classification set out above in paragraph (1) and as defined in §18A-4-8 of this code.

(4) The Employee may be dismissed at any time for immorality, incompetency, cruelty, insubordination, intemperance or willful neglect of duty pursuant to §18A-2-8 of this code.

(5) The Superintendent of the _____ County Board of Education, subject to the approval of the Board, may transfer and assign the Employee in the manner provided by §18A-7-2 of this code.

(6) This contract shall at all times be subject to any and all existing laws, or such laws as may hereafter be lawfully enacted, and such laws shall be a part of this contract.

(7) This contract may be terminated or modified at any time by the mutual consent of the Board and the Employee.

(8) This contract shall be automatically terminated if the Employee is convicted under §61-8D-3 or §61-8D-5 of this code or comparable statute in any other state, of any criminal offense that requires the Employee to register as a sex offender, or of any criminal offense which has as an element delivery or distribution of a controlled substance: *Provided*, That if the conviction resulting in automatic revocation pursuant to this section is overturned by any Court of this state or the United States, the Employee's contract shall be reinstated unless otherwise prohibited by law.

(9) This contract shall be signed and returned to the Board at its address of _____ within 30 days after being received by the Employee.

(10) By signing this contract the Employee accepts employment upon the terms herein set out.

WITNESS the following signatures as of the day, month and year first above written:

_____, (President, _____ County Board of Education) _____, (Secretary, _____ County Board of Education) _____, (Employee)"

The use of this form may not be interpreted to authorize boards to discontinue any employee's contract status with the board or rescind any rights, privileges, or benefits held under contract or otherwise by any employee prior to the effective date of this section.

Each contract of employment shall be designated as a probationary or continuing contract. The employment of service personnel shall be made a matter of minute record. The employee shall return the contract of employment to the county board of education within 30 days after receipt or otherwise he or she shall forfeit his or her right to employment.

Under such regulation and policy as may be established by the county board, service personnel selected and trained for teacher-aide classifications, such as monitor aide, clerical aide, classroom aide, and general aide, shall work under the direction of the principal and teachers to whom assigned.

CHAPTER 212

**(Com. Sub. for S. B. 282 - By Senators Grady, Woelfel, Deeds,
and Oliverio)**

[Passed April 4, 2025; in effect from passage]
[Approved by the Governor on April 15, 2025.]

AN ACT to amend and reenact §18A-2-3 and §18A-4-15a of the Code of West Virginia, 1931, as amended, relating to statutory provisions that pertain to allowing a person receiving retirement benefits under the Teachers Retirement System to accept employment as a critical needs substitute teacher or bus operator for an unlimited number of days each fiscal year if certain conditions are satisfied; creating exceptions to posting related requirements applicable when a retired teacher is employed as a critical needs substitute; changing the statutory expiration date; creating exceptions to posting related requirements applicable when a retired bus operator is employed as a critical needs substitute; and changing the statutory expiration date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-3. Employment of substitute teachers; and employment of retired teachers as substitutes in areas of critical need and shortage.

(a) The county superintendent, subject to approval of the county board, may employ and assign substitute teachers to any of the following duties:

(1) Fill the temporary absence of any teacher or an unexpired school term made vacant by resignation, death, suspension, or dismissal;

(2) Fill a teaching position of a regular teacher on leave of absence; and

(3) Perform the instructional services of any teacher who is authorized by law to be absent from class without loss of pay, providing the absence is approved by the board of education in accordance with the law.

The substitute shall be a duly certified teacher.

(b) Notwithstanding any other provision of this code to the contrary, a substitute teacher who has been assigned as a classroom teacher in the same classroom continuously for more than one half of a grading period and whose assignment remains in effect two weeks prior to the end of the grading period, shall remain in the assignment until the grading period has ended, unless the principal of the school certifies that the regularly employed teacher has communicated with and assisted the substitute with the preparation of lesson plans and monitoring student progress or has been approved to return to work by his or her physician. For the purposes of this section, teacher and substitute teacher, in the singular or plural, mean professional educator as defined in §18A-1-1 of this code.

(c) Persons who are hired as long-term substitute teachers shall be provided information by the county board relating to an IEP plan and 504 plan, detailing their uses and what those long-term substitute teachers should do to implement these plans upon their hiring.

(d) (1) The Legislature hereby finds and declares that due to a shortage of qualified substitute teachers, a compelling state interest exists in expanding the use of retired teachers to provide service as substitute teachers in areas of critical need and shortage. The Legislature further finds that diverse circumstances exist among the counties for the expanded use of retired teachers as substitutes.

(2) For the purposes of this subsection:

(A) "Area of critical need and shortage for substitute teachers" means an area of certification and training in which the number of available substitute teachers in the county who hold certification and training in that area and who are not retired is insufficient to meet the projected need for substitute teachers; and

(B) "Teacher or substitute teacher" includes speech pathologists, school nurses, and school counselors.

(3) A person receiving retirement benefits under §18-7A-1 *et seq.* of this code or who is entitled to retirement benefits during the fiscal year in which that person retired may accept employment as a critical needs substitute teacher for an unlimited number of days each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise entitled if the following conditions are satisfied:

(A) The county board adopts a policy recommended by the superintendent to address areas of critical need and shortage for substitute teachers;

(B) The policy sets forth the areas of critical need and shortage for substitute teachers in the county in accordance with the definition of "area of critical need and shortage for substitute teachers" set forth in subdivision (2) of this subsection;

(C) The policy provides for the employment of retired teachers as critical needs substitute teachers during the school year on an expanded basis in areas of critical need and shortage for substitute teachers as provided in this subsection;

(D) The policy provides that a retired teacher may be employed as a substitute teacher in an area of critical need and shortage for substitute teachers on an expanded basis as provided in this subsection only when no other teacher who holds certification and training in the area and who is not retired is available and accepts the substitute assignment;

(E) The policy is effective for one school year only and is subject to annual renewal by the county board;

(F) The state board approves the policy and the use of retired teachers as substitute teachers on an expanded basis in areas of critical need and shortage for substitute teachers as provided in this subsection; and

(G) Prior to employment of a retired teacher as a critical needs substitute teacher beyond the post-retirement employment limitations established by the Consolidated Public Retirement Board, the superintendent of the affected county submits to the state board in a form approved by the Consolidated Public Retirement Board and the state board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired teachers as substitutes to address areas of critical need and shortage, the name or names of the person or persons to be employed as a critical needs substitute pursuant to the policy, the critical need and shortage area position filled by each person, the date that the person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement. Upon verification of compliance with this section and the eligibility of the critical needs substitute teacher for employment beyond the post-retirement limit, the state board shall submit the affidavit to the Consolidated Public Retirement Board.

(4) Any person who retires and begins work as a critical needs substitute teacher within the same fiscal year in which that person retired shall lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree critical needs substitute teacher in that fiscal year and ending with the month following the date the retiree ceases to perform service as a critical needs substitute teacher.

(5) Retired teachers employed to perform expanded substitute service pursuant to this subsection are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and may not accrue seniority.

(6) A retired teacher is eligible to be employed as a critical needs substitute teacher to fill a vacant position without any loss of retirement benefits attributed to the annuity reserve only if the retired teacher's retirement became effective before the first day of July preceding at least the fiscal year during which he or she is employed as a critical needs substitute teacher.

(7) When a retired teacher is employed as a critical needs substitute to fill a vacant position, the county board shall continue to post the vacant position until it is filled with a regularly employed teacher who is fully certified or permitted for the position: *Provided, That:*

(A) The posting is only required to occur once at the beginning of the year and once mid-year;

(B) This subdivision does not apply when filling a teaching position of a regular teacher on leave of absence; and

(C) This subdivision does not apply when a position is filled with a regularly employed teacher who is fully certified or permitted for the position but the teacher is not available at the time he or she accepts the position.

(8) When a retired teacher is employed as a critical needs substitute to fill a vacant position, the position vacancy shall be posted electronically and easily accessible to prospective employees as determined by the state board: *Provided, That:*

(A) The posting is only required to occur once at the beginning of the year and once mid-year;

(B) This subdivision does not apply when filling a teaching position of a regular teacher on leave of absence; and

(C) This subdivision does not apply when a position is filled with a regularly employed teacher who is fully certified or permitted for the position but the teacher is not available at the time he or she accepts the position.

(9) Until this subsection is expired pursuant to subdivision (10) of this subsection, the state board shall report to the Joint Committee on Government and Finance, prior to February 1 of each year, information indicating the effectiveness of the provisions of this subsection on reducing the critical need and shortage of substitute teachers including, but not limited to, the number of retired teachers, by critical need and shortage area position filled and by county, employed beyond the post-retirement employment limit established by the Consolidated Public Retirement Board, the date that each person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement. A copy of the report shall also be provided to the Legislative Oversight Commission on Education Accountability.

(10) The provisions of this subsection shall expire on June 30, 2030.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-15a. Employment of retired bus operators as substitutes in areas of critical need and shortage.

(a) The Legislature hereby finds and declares that due to a shortage of qualified substitute bus operators a compelling state interest exists in expanding the use of retired bus operators to provide service as substitute bus operators in an area of critical need and shortage.

(b) The Legislature further finds and declares that this shortage is significant and overarching, and in order to comply with §18-5-13(f)(1) of this code, this need supersedes any preclusion of modification of rights codified in §18-7A-28e of this code.

(1) For the purposes of this subsection, "area of critical need and shortage for substitute bus operators" means that the number of available qualified substitute bus operators in the county who are not retired and are available and willing to accept substitute bus operator assignments is insufficient to meet the projected need for qualified substitute bus operators.

(2) A person receiving retirement benefits under §18-7A-1 *et seq.* of this code, or who is entitled to retirement benefits during the fiscal year in which that person retired, may accept employment as a critical need substitute bus operator for an unlimited number of days each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise entitled, subject to satisfaction of the following conditions:

(A) The county board adopts a policy recommended by the superintendent to address a critical need and shortage for substitute bus operators;

(B) The superintendent of the county board submits the policy to the State Board of Education for approval in the first year of its utilization. After initial approval by the State Board of Education, the county board must annually renew the policy at the local level and provide confirmation to the State Board of Education of its intent to utilize the policy in the subsequent year;

(C) The policy sets forth the critical need and shortage for substitute bus operators in the county in accordance with the definition of area of critical need and shortage for substitute bus operators as provided in subdivision (1) of this subsection;

(D) The policy provides for the employment of retired bus operators as critical need substitute bus operators during the school year on an expanded basis in areas of critical need and shortage for substitute bus operators as provided in this subsection;

(E) The policy provides that a retired bus operator may be employed as a substitute bus operator in an area of critical need and shortage for substitute bus operators on an expanded basis as provided in this subsection only when no other qualified bus operator who is not retired is available and accepts the substitute assignment; and

(F) Prior to employment of a retired bus operator as a critical need substitute bus operator beyond the post-retirement employment limitations established by the Consolidated Public Retirement Board, the superintendent of the affected county

submits to the state board in a form approved by the Consolidated Public Retirement Board and the state board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired bus operators as substitutes to address its critical need and shortage, the name or names of the person or persons to be employed as a critical need substitute pursuant to the policy, the date that the person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement. Upon verification of compliance with this section and the eligibility of the critical need substitute bus operator for employment beyond the post-retirement limit, the state board shall submit the affidavit to the Consolidated Public Retirement Board.

(3) Any person who retires and begins work as a critical need substitute bus operator within the same fiscal year in which that person retired shall lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree critical need substitute bus operator in that fiscal year and ending with the month following the date the retiree ceases to perform service as a critical need substitute bus operator.

(4) Retired bus operators employed to perform expanded substitute service pursuant to this subsection are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and may not accrue seniority.

(5) A retired bus operator is eligible to be employed as a critical need substitute bus operator to fill a vacant position without any loss of retirement benefits attributed to the annuity reserve only if the retired bus operator's retirement became effective before the first day of July preceding at least the fiscal year during which he or she is employed as a critical need substitute bus operator.

(6) When a retired bus operator is employed as a critical need substitute to fill a vacant position, the county board shall continue to post the vacant position until it is filled with a regularly employed bus operator who is fully qualified for the position: *Provided, That:*

(A) The posting is only required to occur once at the beginning of the year and once mid-year;

(B) This subdivision does not apply when filling a bus operator position of a regular bus operator on leave of absence; and

(C) This subdivision does not apply when a position is filled with a certified bus operator but the bus operator is not available at the time the bus operator accepts the position.

(7) When a retired bus operator is employed as a critical need substitute to fill a vacant position, the position vacancy shall be posted electronically and easily accessible to prospective employees as determined by the state board: *Provided, That:*

(A) The posting is only required to occur once at the beginning of the year and once mid-year;

(B) This subdivision does not apply when filling a bus operator position of a regular bus operator on leave of absence; and

(C) This subdivision does not apply when a position is filled with a certified bus operator but the bus operator is not available at the time the bus operator accepts the position.

(8) The provisions of this subsection shall expire on June 30, 2030.



CHAPTER 213

(Com. Sub. for H. B. 2499 - By Delegate E. Pritt)

[Passed April 10, 2025; in effect July 1, 2025]

[Approved by the Governor on April 29, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-3-13, relating to requiring inperson training for principals employed in the public schools, appropriate central office personnel, superintendents and county board of education members on the Individuals with Disability Education Act, federal regulations, and West Virginia State Board of Education Policy 2419 “Regulations for the Education of Students with Exceptionalities”; specifying other information the training is to include; specifying when training is to occur; requiring each principal and county board member to inform teachers, in person, of their rights and listing minimum information this is to include; and requiring in every Individualized Education Program meeting certain information be explained to the guardian of a child.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-13. Training course for principals in public schools; informing teachers of due process; IEP format.

(a) *Training.* – Principals who are employed in public schools, appropriate central office personnel, superintendent, and county board of education members shall receive in-person training on the Individuals with Disability Education Act (IDEA), federal regulations and West Virginia State Board of Education Policy

2419 “Regulations for the Education of Students with Exceptionalities”. Specifically, this training must include the understanding of a students’ Least Restrictive Environment (LRE), student discipline procedures and requirements, and parental rights and due process safeguards. This training shall also include the following information:

(1) Maximum class size for instructional periods by programmatic level and level of service needs for students with disabilities;

(2) Extenuating circumstances for submitting a waiver request when student numbers exceed staffing ratios;

(3) Teacher’s rights for advocating for students, procedural rights documentation, and all protections set forth under §18-20-1c;

(4) Classroom teachers’ rights and protections that they may not be reprimanded for advocating for their student(s); and

(5) Information related to local advocacy agencies and local United States Department of Education funded advocacy agencies.

(b) *Time period.* – This training shall be conducted for principal, appropriate central office personnel, Superintendents, and county board of education members before December 31, 2025, and following subsequent revisions to IDEA, federal regulations and/or West Virginia State Board of Education Policy 2419 “Regulations for the Education of Students with Exceptionalities”. Newly employed personnel and elected or appointed county board of education members shall receive this training within 30 days thereof.

(c) *Teacher protections and rights.* – Each principal and county board members shall inform teachers, in person, of their rights; including but not limited to:

(1) The documentation process within a 45-day grading period for teachers;

(2) The rights of teachers when it comes to informing parents of local advocates who can come to the Individualized Education Program ("IEP") meetings;

(3) Protection methods in place for teachers who advocate for student placement; and

(4) All teacher protections and rights set forth under §18-20-1c.

(d) *Individualized Education Program meeting format.* – In every Individualized Education Program meeting, a representative of the school shall explain to the guardian of the child, verbally, the process for identifying a student, the parents or guardians due process rights, teacher protections and procedural rights as set forth under §18-20-1c and local advocacy centers information and points of contact.



CHAPTER 214

(Com. Sub. for H. B. 2513 - By Delegates Toney and Vance)

[Passed April 4, 2025; in effect 90 days from passage (July 3, 2025)]

[Approved by the Governor on April 14, 2025.]

AN ACT to amend and reenact §18-5-1a and §18-5-4 of the Code of West Virginia, 1931, as amended, relating to adding to topics required to be covered by the county board of education member orientation; requiring that any county board of education member who is unable to attend the initial orientation training for good cause complete a make-up orientation training within 30 days of being sworn in; requiring any appointed member to attend and complete a make-up orientation training within 30 days of being appointed; increasing annual hours of training required of county board of education members; modifying topics required to be covered by training; allowing the West Virginia Board of Education to require a county board of education member to attend additional training under certain conditions; including trainings required by the West Virginia Board of Education with those training for which failure to attend and complete without good cause constitutes neglect of duty; removing January 1 deadline for the requirement that a county board of education member satisfy the annual training requirement in the final year of any four-year term of office and creating exception to that requirement; adding certain non-voting ex officio members to the County Board Member Training Standards Review Committee; requiring the State Superintendent of Schools to report annually to the Legislative Oversight Commission on Education Accountability certain County Board Member Training Standards Review Committee and county board of education related information; setting the county board of education member compensation rate at \$260 per meeting

attended unless the board votes to approve a lower rate; and excepting payment for mileage from the requirement for presentation of receipts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1a. Eligibility of members; training requirements.

(a) A person who is a member of a county board:

(1) Shall be a citizen and resident in the county in which he or she serves on the county board. A person who is a candidate for membership on a county board or who is a member-elect of a county board shall be a citizen and resident in the county in which he or she seeks to serve on the county board;

(2) May not be employed by the county board on which he or she serves, including employment as a teacher or service person;

(3) May not engage in the following political activities:

(A) Become a candidate for or hold any other public office, other than to succeed himself or herself as a member of a county board subject to the following:

(i) A candidate for a county board, who is not currently serving on a county board, may hold another public office while a candidate if he or she resigns from the other public office prior to taking the oath of office as a county board member.

(ii) The term "public office" as used in this section does not include service on any other board, elected or appointed, profit or nonprofit, under the following conditions:

(I) The person does not receive compensation; and

(II) The primary scope of the board is not related to public schools.

(B) Become a candidate for, or serve as, an elected member of any political party executive committee;

(C) Become a candidate for, or serve as, a delegate, alternate or proxy to a national political party convention;

(D) Solicit or receive political contributions to support the election of, or to retire the campaign debt of, any candidate for partisan office;

(4) May engage in any or all of the following political activities:

(A) Make campaign contributions to partisan or bipartisan candidates;

(B) Attend political fundraisers for partisan or bipartisan candidates;

(C) Serve as an unpaid volunteer on a partisan campaign;

(D) Politically endorse any candidate in a partisan or bipartisan election; or

(E) Attend a county, state, or national political party convention.

(b) A member or member-elect of a county board, or a person desiring to become a member of a county board, may make a written request to the West Virginia Ethics Commission for an advisory opinion to determine if another elected or appointed position held or sought by the person is an office or public office which would bar service on a county board pursuant to subsection (a) of this section.

(1) Within 30 days of receipt of the request, the Ethics Commission shall issue a written advisory opinion in response to the request and publish the opinion in a manner which, to the fullest extent possible, does not reveal the identity of the person making the request.

(2) A county board member who relies in good faith upon an advisory opinion issued by the West Virginia Ethics Commission to the effect that holding a particular office or public office is not a bar from membership on a county board and against whom proceedings are subsequently brought for removal from the county board on the basis of holding that office or offices, is entitled to reimbursement by the county board for reasonable attorney's fees and court costs incurred by the member in defending against these proceedings, regardless of the outcome of the proceedings.

(3) A vote cast by the member at a meeting of the county board may not be invalidated due to a subsequent finding that holding the particular office or public office is a bar to membership on the county board.

(4) Good faith reliance on a written advisory opinion of the West Virginia Ethics Commission that a particular office or public office is not a bar to membership on a county board is an absolute defense to any civil suit or criminal prosecution arising from any proper action taken within the scope of membership on the county board, becoming a member-elect of the county board or seeking election to the county board.

(c) To be eligible for election or appointment as a member of a county board, a person shall possess at least a high school diploma or a general educational development (GED) diploma. This provision does not apply to members or members-elect who have taken office prior to May 5, 1992, and who serve continuously from that date forward.

(d) A person elected to a county board after July 1, 2024, may not assume the duties of county board member unless he or she has first attended and completed an orientation training relating to boardsmanship governance effectiveness, and fiscal management, which shall be provided between the date of election and the beginning of the member's term of office under the following conditions:

(1) A portion or portions of subsequent training such as that offered in the orientation training may be provided to members after they have commenced their term of office;

(2) Attendance in the orientation training provided between the date of election and the beginning of the member's term of office permits the member-elect to assume the duties of county board member, as specified in this section: *Provided*, That any county board member who is unable to attend the initial orientation training for good cause, is required to complete a make-up orientation training within 30 days of being sworn in as a county board member;

(3) Members appointed to the county board shall attend and complete an orientation training within 30 days of being appointed; and

(4) The provisions of this subsection relating to orientation training do not apply to members who have taken office prior to July 1, 2025, and who serve continuously from that date forward.

(e) Annually, effective July 1, 2025, each member of a county board shall receive twelve hours of training in areas relating to boardsmanship, governance effectiveness, fiscal management, and school performance issues including, but not limited to, pertinent state and federal statutes such as the "Process for Improving Education" set forth in §18-2E-5 of this code and the Every Student Succeeds Act (ESSA), the Individuals with Disabilities Education and Improvement Act of 2004 (IDEA), and their respective administrative rules: *Provided*, That the state board may require any county board member to attend additional training if they believe that the training would be beneficial in assisting the member in successfully fulfilling his or her duties on the county board as requested by the State Superintendent.

(1) All training required in this section shall be approved by the state board and conducted by the West Virginia School Board Association or other organization or organizations approved by the state board:

(A) The state board may exclude time spent in training on school performance issues from the requisite twelve-hour requirement; and

(B) If the state board elects to exclude time spent in training on school performance issues from the requisite twelve hours, the state board shall limit the training to a feasible and practicable amount of time.

(2) Failure to attend and complete the orientation training, annual training, or training required by the state board, without good cause, as determined by the state board by duly promulgated legislative rules, constitutes neglect of duty under §6-6-7 of this code.

(f) In the final year of any four-year term of office, a member shall satisfy the annual training requirement unless the county board member is not seeking reelection. Failure to comply with the training requirements of this section without good cause, as defined by the state board by duly promulgated legislative rules, constitutes neglect of duty under §6-6-7 of this code.

(g) The state board shall appoint a committee named the "County Board Member Training Standards Review Committee" whose members shall include the chair of the Senate Committee on Education and the chair of the House Committee on Education, or their respective designees, which shall serve as non-voting ex officio members. The County Board Member Training Standards Review Committee shall, at a minimum, meet annually. Subject to state board approval, the committee shall determine which trainings and training organizations shall be approved, and whether county board members have satisfied the annual training requirement. Members of the committee serve without compensation but may be reimbursed by their agencies or employers for all reasonable and necessary expenses actually incurred in the performance of their duties under this subsection.

(h) On or before January 1, 2026, and annually on or before January 1 thereafter, the State Superintendent shall report to the Legislative Oversight Commission on Education Accountability

on the activities of the County Board Member Training Standards Review Committee, the types of training provided to county board members, the level of training participation by county board members, and the number of board meetings held.

(i) Notwithstanding the provisions of §6-5-5 of this code, no person who has been convicted of an offense under the provisions of §61-8A-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq.* of this code in which the victim is a minor may hold office as a member of a county board.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

(a) The county board shall meet on the dates provided by law, and at any other times the county board deems necessary. Subject to adequate public notice, nothing in this section prohibits the county board from conducting regular meetings in facilities within the county other than the county board office. At any meeting authorized in this section and held in compliance with the provisions of §18A-1-1 *et seq.* of this code, the county board may employ qualified teachers, or those who will qualify by the time they assume their duties, necessary to fill existing or anticipated vacancies for the current or next ensuing school year. Meetings of the county board shall be held in compliance with the provisions of §18A-1-1 *et seq.* of this code for purposes relating to the assignment, transfer, termination and dismissal of teachers and other school employees.

(b) Special meetings may be called by the president or any three members, but no business may be transacted other than that designated in the call.

(c) In addition, a public hearing shall be held concerning the preliminary operating budget for the next fiscal year not fewer than ten days after the budget has been made available to the public for inspection and within a reasonable time prior to the submission of the budget to the state board for approval. Reasonable time shall be granted at the hearing to any person who wishes to speak regarding

any part of the budget. Notice of the hearing shall be published as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et. seq.* of this code.

(d) A majority of the members of the county board constitutes the quorum necessary for the transaction of official business.

(e) Board members shall receive compensation at the rate of \$260 per meeting attended, unless the Board votes to approve a lower rate, but they may not receive pay for more than 40 meetings in any one fiscal year. Board members who serve on an administrative council of a multicounty vocational center also may receive compensation for attending up to twelve meetings of the council at the same rate as for meetings of the county board: *Provided*, That council meetings are not counted as board meetings for purposes of determining the limit on compensable board meetings: *Provided, however*, That a county board member who is in default of a training requirement established in §18-5-1a of this code shall not, until after the default is cured, receive compensation for any meeting held during the period of default. For purposes of compensation, a member in default of a training requirement may cure the default by completing the unfulfilled training requirements within three months of the default. Upon curing the default, the member shall receive compensation, without interest, for the meetings held during the period of default: *Provided, further*, That up to five paid meetings may be provided when planning for activities such as running an election for excess levy, construction bond hearings, school closure hearings, personnel hearings, student expulsion hearings, and in the case of a disaster: *And provided further*, That members shall be paid for up to two trainings.

(f) Members also shall be paid, upon the presentation of receipts, for all necessary traveling expenses, including all authorized meetings, incurred on official business, at the order of the county board: *Provided*, That the presentation of receipts is not required for payment for mileage.

(g) When, by a majority vote of its members, a county board considers it a matter of public interest, the county board shall join the West Virginia School Board Association and may join the

National School Board Association and shall pay the dues prescribed by the associations and approved by action of the respective county boards. Membership dues and actual traveling expenses incurred by board members for attending meetings of the West Virginia School Board Association shall be paid by their respective county boards out of funds available to meet actual expenses of the members, but no allowance may be made except upon presentation of receipts.

CHAPTER 215

(Com. Sub. for H. B. 2548 - By Delegates Hornby, Willis, Riley, Ellington, McGeehan, Phillips, Statler, Akers, Maynor, Chiarelli, and Heckert)

[Passed April 2, 2025; in effect 90 days from passage (July 1, 2025)]
[Approved by the Governor on April 14, 2025.]

AN ACT to amend and reenact §18-3-3 of the Code of West Virginia, 1931, as amended, relating to the State Superintendent's general supervision of schools; clarifying supervisory duties; requiring the State Superintendent to report annually to the Legislative Oversight Commission on Education Accountability regarding implementation of state board rules in each county school district; and providing consequences for failure to follow state board rules.

Be it enacted by the Legislature of West Virginia

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-3. General supervision of schools.

(a) The State Superintendent of Schools shall have general supervision of the free schools of the state, and shall be the chief executive officer of the state Board of Education. The State Superintendent of Schools shall be charged with the general supervision of all county superintendents of county boards and of county boards of education within the state, except as provided in §6-9-1, *et seq.* of this code. The State Superintendent of Schools shall oversee all the details of the school system of the state, and of the rules of the state Board of Education, so as to secure the uniform operation of the same throughout the state.

(b) The State Superintendent shall report annually to the Legislative Oversight Commission on Education Accountability regarding the implementation of state board rules in each county school district.

(1) If a county is found in violation of proper implementation of any rule, the State Superintendent shall provide a plan to ensure full implementation of the rule and the timeline therefore.

(2) If a county continues to be in violation of state board rules, school aid funding may be withheld from that count



CHAPTER 216

**(Com. Sub. for H. B. 3125 - By Delegates Barnhart, Stephens,
Hornby, Pritt, Ellington, and Statler)**

[Passed April 12, 2025; in effect from passage]

[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §18A-3-2a and §18A3-4 of the Code of West Virginia, 1931, as amended, relating to certificates valid in the public schools; adding a fourth set of conditions under which a person who meets those conditions can be issued a professional teaching certificate; allowing teachers with a bachelor's degree and 10 years teaching experience, with a valid teaching certificate, in good standing, without any unsatisfactory evaluations to apply for and receive a permanent teaching certificate without having to take any additional course work.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

***§18A-3-2a. Certificates valid in the public schools that may be issued by the State Superintendent.**

In accordance with state board rules for the education of professional educators adopted pursuant to §18A-3-1 of this code and subject to the limitations and conditions of that section, the State Superintendent may issue the following certificates valid in the public schools of the state:

(a) *Professional teaching certificates.* —

***Note:** This section was also amended by H. B. 3125 (Chapter 216), which passed subsequent to this Act.

(1) A professional teaching certificate for teaching in the public schools may be issued to a person who meets the following conditions: (A) Holds at least a bachelor's degree from a regionally accredited institution of higher education, and:

(i) Has passed appropriate state board approved basic skills and subject matter tests in the area for which licensure is being sought; and

(ii) Has completed a program for the education of teachers which meets the requirements approved by the state board; or

(iii) Has met equivalent standards at institutions in other states; or

(iv) Has completed three years of successful teaching experience within the last seven years under a license issued by another state in the area for which licensure is being sought; or

(v) Has completed an alternative program approved by another state; or

(B) Holds at least a bachelor's degree from an accredited institution of higher education, and:

(i) Has passed appropriate state board approved basic skills and subject matter tests; and

(ii) Has completed an alternative program for teacher education as provided in this article; and

(iii) Is recommended for a certificate in accordance with the provisions of §18A-3-1i of this code relating to the program; and

(iv) Is recommended by the State Superintendent based on documentation submitted; or

(C) Holds a bachelor's degree from an accredited institution of higher education, and:

(i) Submits to a criminal history check pursuant to §18A-3-10 of this code: *Provided*, That information discovered during the

criminal history check may form the basis for the denial of a certificate for just cause; and

(ii) Successfully completes pedagogical training or a pedagogical course or courses in substantive alignment with nationally recognized pedagogical standards, or approved or established by the state board; and

(iii) Passes the same subject matter and competency test or tests required by the state board for traditional program applicants for licensure or;

(D) Is an honorably discharged member of the armed forces who:

(i) Holds at least a bachelor's degree from an accredited institution of higher education that is related to the available position which the veteran has applied to; and

(ii) Has passed the basic skills and subject matter test or tests required by the state board for teachers to become certified in the area for which the licensure is sought; and

(iii) Is exempt from any additional teacher certification requirements except the criminal history check required by §18A-3-10 of this code.

(2) The certificate shall be endorsed to indicate the grade level or levels or areas of specialization in which the person is certified to teach or to serve in the public schools.

(3) The initial professional certificate is issued provisionally for a period of three years from the date of issuance:

(A) The certificate may be converted to a professional certificate valid for five years subject to successful completion of a beginning teacher induction program, if applicable; or

(B) The certificate may be renewed subject to rules adopted by the state board.

(4) Teaching certificates granted pursuant to §18A-3-2a(a)(1)(C) of this code shall be equivalent to certificates granted to graduates of teacher preparation programs at public higher education institutions.

(b) *Alternative program teacher certificate.* — An alternative program teacher certificate may be issued to a candidate who is enrolled in an alternative program for teacher education approved by the state board.

(1) The certificate is valid only for the alternative program position in which the candidate is employed and is subject to enrollment in the program.

(2) The certificate is valid while the candidate is enrolled in the alternative program, up to a maximum of three years, and may not be renewed.

(c) *Professional administrative certificate.* —

(1) A professional administrative certificate, endorsed for serving in the public schools, with specific endorsement as a principal, vocational administrator, supervisor of instructions, or superintendent, may be issued to a person who has completed requirements all to be approved by the state board as follows:

(A) Holds at least a master's degree from an institution of higher education accredited to offer a master's degree, and:

(i) Has successfully completed an approved program for administrative certification developed by the state board in cooperation with the chancellor for higher education; and

(ii) Has successfully completed education and training in evaluation skills through the Center for Professional Development, or equivalent education and training in evaluation skills approved by the state board; and

(iii) Possesses three years of management level experience.

(2) Any person serving in the position of dean of students on June 4, 1992, is not required to hold a professional administrative certificate.

(3) The initial professional administrative certificate is issued provisionally for a period of five years. This certificate may be converted to a professional administrative certificate valid for five years or renewed, subject to the regulations of the state board.

(d) *Paraprofessional certificate.* — A paraprofessional certificate may be issued to a person who meets the following conditions:

(1) Has completed 36 semester hours of post-secondary education or its equivalent in subjects directly related to performance of the job, all approved by the state board; and

(2) Demonstrates the proficiencies to perform duties as required of a paraprofessional as defined in §18A-4-8 of this code.

(e) *Other certificates; permits.* —

(1) Other certificates and permits may be issued, subject to the approval of the state board, to persons who do not qualify for the professional or paraprofessional certificate.

(2) A certificate or permit may not be given permanent status and a person holding one of these credentials shall meet renewal requirements provided by law and by regulation, unless the state board declares certain of these certificates to be the equivalent of the professional certificate.

(3) Within the category of other certificates and permits, the State Superintendent may issue certificates for persons to serve in the public schools as athletic coaches or coaches of other extracurricular activities, whose duties may include the supervision of students, subject to the following limitations:

(A) The person is employed under a contract with the county board of education.

(i) The contract specifies the duties to be performed, specifies a rate of pay that is equivalent to the rate of pay for professional educators in the district who accept similar duties as extra duty assignments, and provides for liability insurance associated with the activity; and

(ii) The person holding this certificate is not considered an employee of the board for salary and benefit purposes other than as specified in the contract.

(B) The person completes an orientation program designed and approved in accordance with state board rules.

(f) *Clinical Teacher of Record Permit.* —

(1) A clinical teacher of record permit may be issued to a candidate who is enrolled in a clinical teacher of record program in accordance with an agreement between an institution of higher education and a county board. The agreement is developed pursuant to §18A-3-1(e) of this code and requires approval by the state board.

(2) The permit is valid only for the clinical teacher of record program position in which the candidate is enrolled and is subject to enrollment in the program. The permit is valid for no more than one school year and may not be renewed.

(g) *Temporary teaching certificates for armed forces spouses.* —

(1) A temporary teaching certificate for an armed forces spouse may be issued to an individual who meets the following criteria:

(A) He or she is married to a member of the armed forces of the United States who is on active duty;

(B) He or she holds a current unencumbered teaching certificate or license issued by an equivalent credentialing department, board, or authority, as determined by the State Superintendent, in another state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, another territory or protectorate of the United States or a foreign country; and

(C) He or she provides proof acceptable to the State Superintendent that his or her spouse is assigned to a duty station in this state or at a military installation within 50 air miles of the West Virginia border and that he or she is also assigned to a duty station in this state or at a military installation within 50 air miles of the West Virginia border under his or her spouse's official active duty military orders.

(2) The State Superintendent shall deny a temporary teaching certificate to an individual described in paragraph (1) of this subdivision for fraud, material misrepresentation or concealment in the person's application for a temporary teaching certificate or for a conviction for which an individual's teaching certificate may be revoked under §18A-3-6 of this code.

(3) A temporary teaching certificate issued under paragraph (1) of this subdivision is valid for one year and may be renewed for additional one-year terms if the State Superintendent determines the individual holding the temporary teaching certificate continues to meet the requirements of paragraph (1) of this subdivision. The State Superintendent may revoke a temporary teaching certificate for a conviction for which an individual's teaching certificate may be revoked under §18A-3-6 of this code.

(h) Notwithstanding the provisions of subsection (a)(3)(B) of this section, teachers with a bachelor's degree and 10 years teaching experience, with a valid teaching certificate, in good standing, without any unsatisfactory evaluations will be able to apply for and receive a permanent teaching certificate in West Virginia without having to take any additional course work. This subsection shall be effective from passage.

***§18A-3-4. Validity of present certificates.**

Nothing in this article shall be construed or interpreted in such way as to invalidate or in any manner change or shorten the validity period of certificates, including grade-level teaching rights, in force on the effective date of this act, nor the right to renew or make permanent such certificates, notwithstanding the provisions set forth in §18A-3-2a of this code.

***Note:** This section was also amended by H. B. 3125 (Chapter 216), which passed subsequent to this Act.

CHAPTER 217

(Com. Sub. for S. B. 677 - By Senator Smith (Mr. President))

[Passed April 11, 2025; in effect 90 days from passage (July 10, 2025)]
[Approved by the Governor on April 28, 2025.]

AN ACT to amend and reenact §32-2-202, §32-3-304a, §32-3-305, and §32-4-406 of the Code of West Virginia, 1931, as amended, relating to fee changes in the Uniform Securities Act; adjusting fees to be remitted to the State Auditor; placing submission requirements on certain issuers of securities; and adjusting fund distributions made by the State Auditor.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. REGISTRATION OF BROKER-DEALERS AND AGENTS; REGISTRATION AND NOTICE FILING FOR INVESTMENT ADVISERS.

§32-2-202. Registration and notice filing procedure.

(a) A broker-dealer, agent, or investment adviser may obtain an initial or renewal registration by filing with the commissioner an application, together with a consent to service of process pursuant to §32-4-414(g) of this code. The application shall contain whatever information the commissioner by rule requires concerning matters such as: (1) The applicant's firm and place of organization; (2) the applicant's proposed method of doing business; (3) the qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer or director, any person occupying a similar status or performing similar functions or any person, directly or indirectly, controlling the broker-dealer or investment adviser and, in the case of an investment adviser, the qualifications and business history of any

employee; (4) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and (5) subject to the limitations of §15(h)(1) of the Securities Exchange Act of 1934, the applicant's financial condition and history. The commissioner may by rule or order require an applicant for initial registration to publish an announcement of the application as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication area or areas for the publication shall be specified by the commissioner. If no denial order is in effect and no proceeding is pending under §32-2-204 of this code, registration becomes effective at noon of the thirtieth day after an application is filed. The commissioner may by rule or order specify an earlier effective date and he or she may by order defer the effective date until noon of the thirtieth day after the filing of any amendment to an application. Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer or director, or a person occupying a similar status or performing similar functions, as designated by the broker-dealer in writing to the commissioner and approved in writing by the commissioner. Registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, officer or director, or a person occupying a similar status or performing similar functions as designated by the investment adviser in writing to the commissioner and approved in writing by the commissioner.

(b) Except with respect to federal-covered advisers whose only clients are those described in §32-2-201(c)(3)(A) and (B) of this code, a federal-covered adviser shall file with the commissioner, prior to acting as a federal-covered adviser in this state, such documents as have been filed with the securities and exchange commissioner as the commissioner, by rule or order, may require along with notice filing fees under subsection (c) of this section.

(c) Every applicant for initial or renewal registration shall pay a filing fee of \$300 in the case of a broker-dealer and the agent of an issuer, \$70 in the case of an agent, \$200 in the case of an investment adviser, and \$75 for each investment adviser

representative. When an application is denied or withdrawn, the commissioner shall retain all of the fee.

(d) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. A filing fee of \$24 shall be paid.

(e) The commissioner may, by rule or order, require a minimum capital for registered broker-dealers, subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and establish minimum financial requirements for investment advisers, subject to the limitations of Section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

(f) The commissioner may, by rule or order, require registered broker-dealers, agents, and investment advisers who have custody of or discretionary authority over client funds or securities to post surety bonds in amounts as the commissioner may prescribe, by rule or order, subject to the limitations of Section 15 of the Securities Exchange Act of 1934 (for broker-dealers) and Section 222 of the Investment Advisers Act of 1940 (for investment advisers), up to \$25,000 and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any registrant whose net capital or, in the case of an investment adviser, whose minimum financial requirements, which may be defined by rule, exceeds the amounts required by the commissioner. Every bond shall provide for suit thereon by any person who has a cause of action §32-4-410 of this code and, if the commissioner by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time limitations set forth in §32-4-410(e) of this code.

(g) Every applicant, whether registered under this chapter or not, shall pay a \$60 fee for each name or address change.

(h) Every broker-dealer and investment advisor registered under this chapter shall pay an annual \$60 fee for each branch office located in West Virginia.

(i) Each agent, representative, and associated person of a broker-dealer or investment advisor when applying for an initial license under this section or changing employers shall pay a compliance assessment of \$30. Each agent, representative, and associated person, when applying for a renewal license under this section, shall pay a compliance assessment of \$12. The West Virginia Legislature reserves the right to adjust the fees set forth in this section once every four years in an amount reflecting the percentage increase in the cost of administering this article from the amount of such costs on the effective date of this article.

ARTICLE 3. REGISTRATION OF SECURITIES.

§32-3-304a. Federal-covered securities.

(a) Securities for which a registration statement has been filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal-covered security under Section 18(b)(2) of the Securities Act of 1933 may be offered for sale or sold to residents of this state upon the commissioner's receipt of: (1) A notice as prescribed by the commissioner by rule or otherwise or in lieu thereof a copy of the issuer's federal registration statement as filed with the securities and exchange commissioner; (2) a consent to service of process signed by the issuer; and (3) payment of a fee as provided for in §32-3-305(b) of this code: *Provided*, That up through October 10, 1999, or such other date as may be legally permissible, a federal-covered security for which a fee has not been paid or promptly remedied following written notification from the commissioner to the issuer of the nonpayment or underpayment of such fees, as required by this article, shall be required to register under this article.

(b) The commissioner, by rule or otherwise, may require the filing of any or all of the following documents with respect to a federal-covered security under Section 18(b)(2) of the Securities Act of 1933:

(1) Prior to the initial offer of such federal covered security in this state, all documents that are part of a current federal registration statement filed with the securities and exchange commission under the Securities Act of 1933; and

(2) After the initial offer of such federal covered security in this state, all documents that are part of an amendment to a current federal registration statement filed with the securities and exchange commission under the Securities Act of 1933, which shall be filed concurrently with the commissioner.

(c) With respect to any security that is a federal-covered security under Section 18(b)(4)(D) of the Securities Act of 1933, the commissioner, by rule or order, may require the issuer to file a notice on SEC Form D and a consent to service of process signed by the issuer no later than 15 days after the first sale of such federal-covered security in this state, together with a fee as established by rule by the commissioner.

(d) The commissioner, by rule or otherwise, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933, with respect to a federal-covered security under Section 18(b)(3) or (4) of the Securities Act of 1933, together with a filing fee for such document as appropriate under §32-3-305(m) and (n) of this code.

(e) An issuer planning to offer and sell securities in this state in an offering exempt under Tier 2 of federal Regulation A (17 CFR 230.251 through 17 CFR 230.263) and § 18(b)(3) or 18(b)(4) of the Securities Act of 1933 (15 USC § 77a) shall submit the following at least 21 calendar days prior to the initial sale in this state:

(1) A completed Regulation A – Tier 2 notice filing form or copies of all documents filed with the U.S. Securities and Exchange Commission;

(2) A consent to service of process on Form U-2 if not filing on the Regulation A – Tier 2 notice filing form; and

(3) A filing fee of \$375 payable to the West Virginia State Auditor.

(1) The initial notice filing is effective for 12 months from the date of the filing with this state. For each additional 12-month period in which the same offering is continued, an issuer conducting a Tier 2 offering under federal Regulation A may renew its notice filing by filing the following on or before the expiration of the notice filing:

(A) The Regulation A – Tier 2 notice filing form marked "renewal" or a cover letter or other document requesting renewal; and

(B) A renewal fee in the amount of \$200 payable to the West Virginia State Auditor.

(2) An issuer may increase the amount of securities offered in this state by submitting a Regulation A – Tier 2 notice filing form marked "amendment" or other document describing the transaction.

(f) The commissioner may issue a stop order suspending the offer and sale of a federal-covered security, except a federal-covered security under Section 18(b)(1) of the Securities Act of 1933, if it finds that: (1) The order is in the public interest; and (2) there is a failure to comply with any condition established under this section.

(g) The commissioner, by rule or order, may waive any or all of the provisions of this section.

§32-3-305. Provisions applicable to registration and notice filing generally.

(a) A registration or notice filing statement may be filed by the issuer, any other person on whose behalf the offering is to be made or a registered broker-dealer. A registration or notice filing statement filed under this chapter registering or noticing investment company shares shall cover only one class, series, or portfolio of investment company shares.

(b) Every person filing a registration or notice filing statement shall pay a filing fee of one sixteenth of one percent of the maximum aggregate offering price at which the registered or noticed securities are to be offered in this state, but the fee shall in no case be less than \$60 or more than \$1,800. When a registration or notice filing statement is withdrawn before the effective date or a pre-effective stop order is entered under §32-3-306 of this code, the commissioner shall retain all of the fee.

(c) Every registration statement and notice filing shall specify: (1) The amount of securities to be offered in this state; (2) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and (3) any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the Securities and Exchange Commission.

(d) In any case where securities sold in this state are in excess of the aggregate amount of securities specified under subsection (c) of this section, the commissioner may require payment of an oversale assessment which shall be three times an amount which equals the difference between the filing fee that would have been payable under subsection (b) of this section based upon the total amount of securities sold in this state and the total filing fees previously paid to the commissioner with respect to such registration or notice filing, but in no case shall the oversale assessment be less than \$420 or be more than \$1,800.

(e) Any document filed under this chapter or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(f) The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration or notice filing statement.

(g) In the case of a non-issuer distribution, information may not be required under §32-3-304 of this code or subsection (k) of this section unless it is known to the person filing the registration

statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(h) The commissioner may by rule or order require as a condition of registration by qualification or coordination: (1) That any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The commissioner may by rule or order determine the conditions of any escrow or impounding required under this subsection, but he or she may not reject a depository solely because of location in another state.

(i) The commissioner may by rule or order require as a condition of registration that any security registered by qualification or coordination be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed with the commissioner or preserved for any period up to three years specified in the rule or order.

(j) Every registration statement is effective for one year from its effective date or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution, except during the time a stop order is in effect under §32-3-306 of this code. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any non-issuer transaction: (1) So long as the registration statement is effective; and (2) between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under §32-3-306 of this code (if the registration statement did not relate, in whole or in part, to a non-issuer distribution) and one year from the effective date of the registration

statement. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the commissioner.

(k) So long as a registration statement is effective, the commissioner may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(l) A registration statement relating to a security issued by a face amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940, may be amended after its effective date so as to increase the securities specified as proposed to be offered. The amendment becomes effective when the commissioner so orders. Every person filing an amendment shall pay a filing fee, calculated in the manner specified in subsection (b) of this section, with respect to the additional securities proposed to be offered.

(m) Every person changing the name or address of a securities registration or notice filing shall pay a \$60 fee for change.

(n) Every person amending a registration statement or notice filing or offering a document without increasing the dollar amount registered shall pay a \$60 fee for each amended statement, notice filing, or document.

(o) Every registered issuer or notice filing shall annually file a sales report and shall pay a filing fee for that report of one eighth of one percent of the maximum offering price at which the registered or noticed securities are offered in this state but the fee shall in no case be less than \$300 nor more than \$1,800.

ARTICLE 4. GENERAL PROVISIONS.

§32-4-406. Administration of chapter; operating fund for securities department.

(a) This chapter shall be administered by the Auditor of this state and he or she is hereby designated, and shall be, the commissioner of securities of this state. He or she has the power and authority to appoint or employ such assistants as are necessary for the administration of this chapter.

(b) The Auditor shall set up a special operating fund for the securities division in his or her office. The Auditor shall pay into the fund 25 percent of all fees collected as provided for in this chapter. If, at the end of any fiscal year, the balance in the special operating fund exceeds 25 percent of the gross revenues from the special operating fund operations, the excess shall be transferred to the General Revenue Fund.

The special operating fund shall be used by the Auditor to fund the operation of the securities division and the general operations of the Auditor's office. The special operating fund shall be appropriated by line item by the Legislature.

(c) Moneys payable for assessments established by §32-4-407a of this code shall be collected by the commissioner and deposited into the General Revenue Fund.

(d) It is unlawful for the commissioner or any of his or her officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of this chapter authorizes the commissioner or any of his or her officers or employees to disclose any information except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of the chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of his or her officers or employees.



CHAPTER 218

**(Com. Sub. for Com. Sub. for H. B. 2889 - By Delegates Criss,
Barnhart, and Hott)**

[Passed April 10, 2025; in effect from passage]

[Approved by the Governor on April 29, 2025.]

AN ACT to amend and reenact §32- 4-402 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §32-4-402a, all relating to authorizing the Commissioner of Securities or his or her designee to conduct a fairness hearing for transactions involving the exchange of a security for one or more outstanding securities, claims, or property interests, or partly for cash; expressly authorizing commissioner or designee to conclude whether conditions of exchange are fair; providing exemption from registration and filing requirements; defining terms; providing for fairness hearing application process; providing deadlines and notice requirements; authorizing filing fee; correcting citations; authorizing rules and orders by commissioner; authorizing commissioner to conduct fairness hearings; and authorizing commissioner to recover costs associated with fairness hearing and issuance of findings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS.

§32-4-402. Exemptions.

(a) The following securities are exempt from §32-3-301 and §32-4-403 of this code:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision

of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution or trust company organized and supervised under the laws of any state;

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this state;

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association or similar association organized and supervised under the laws of this state;

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility or holding company which is: (A) Subject to the jurisdiction of the interstate commerce commission; (B) a registered holding company under the Public Utility Holding Company Act of 1935, or a subsidiary of such a company within the meaning of that act; (C) regulated in respect of its rates and charges by a governmental authority of the United States or any state; or (D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, or the Midwest Stock Exchange, any other stock exchange approved by the commissioner, the National Association of Securities Dealers Automated Quotation/National Market System (NASDAQ/NMS), or any other market system approved by the commissioner, any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved, or any warrant or right to purchase or subscribe to any of the foregoing, except that the commissioner may adopt and promulgate rules pursuant to chapter 29A of this code which, after notice to such exchange or market system and an opportunity to be heard, remove any such exchange or market system from this exemption if the commissioner finds that the listing requirements or market surveillance of such exchange or market system are such that the continued availability of such exemption for such exchange or market system is not in the public interest and that removal is necessary for the protection of investors;

(9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association, and no part of the net earnings of which inures to the benefit of any person, private stockholder or individual;

(10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within 12 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(11) Any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan if the commissioner is notified in writing 30 days before the inception of the plan or, with respect to plans which are in effect on the effective date of this chapter, within 60 days

thereafter (or within 30 days before they are reopened if they are closed on the effective date of this chapter);

(12) Any security issued by an agricultural cooperative association operating in this state and organized under §19-4-1 *et seq.* of this code, or by a foreign cooperative association organized under the laws of another state and duly qualified to transact business in this state.

(b) The following transactions are exempt from §32-3-301 and §32-4-403 of this code:

(1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;

(2) Any nonissuer distribution of an outstanding security if: (A) A recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations; or (B) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest or dividends on the security;

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the commissioner may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds

or other evidence of indebtedness secured thereby, is offered and sold as a unit;

(6) Any transaction by an executor, administrator, sheriff, marshal, constable, receiver, trustee in bankruptcy, guardian, or conservator, and any transaction constituting a judicial sale;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction pursuant to an offer directed by the offeror to not more than 10 persons (other than those designated in subdivision (8) of this subsection) in this state during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in this state, if: (A) The seller reasonably believes that all the buyers in this state (other than those designated in subdivision (8) of this subsection) are purchasing for investment; and (B) no commission or other remuneration is paid or given, directly or indirectly, for soliciting any prospective buyer in this state (other than those designated in subdivision (8) of this subsection), but the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in clauses (A) and (B) with or without the substitution of a limitation on remuneration;

(10) Any offer or sale of a preorganization certificate or subscription if: (A) No commission or other remuneration is paid or given, directly or indirectly, for soliciting any prospective subscriber; (B) the number of subscribers does not exceed 10; and (C) no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants or transferable warrants exercisable within not more than 90 days of their issuance, if: (A) No commission or other remuneration (other than a standby commission) is paid or given, directly or indirectly, for soliciting any security holder in this state; or (B) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow the exemption within the next five full business days;

(12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either chapter;

(13) A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in exchange and partly for cash, if the terms and conditions of the issuance and exchange or delivery and exchange and the fairness of the terms and conditions have been approved by the commissioner at a hearing as provided in §32-4-402a of this code.

(c) The commissioner may by order deny or revoke any exemption specified in subdivision (9) or (11) of subsection (a) or in subsection (b) of this section with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the commissioner may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this subsection. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or

ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated §32-3-301 and §32-4-403 of this code by reasons of any offer or sale effected after the entry of an order under this subsection if he or she sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the order.

(d) In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

§32-4-402a. Fairness Hearing on issuance of securities involved in a reorganization, recapitalization, or refinancing.

(a) For the purposes of this section, the terms "reorganization," "recapitalization," and "refinancing" shall mean:

(1) A readjustment by modification of the terms of securities by agreement;

(2) A readjustment by the exchange of securities by the issuer for others of its securities;

(3) The exchange of securities by the issuer for securities of another issuer;

(4) The acquisition of assets of a person, directly or indirectly, partly or wholly in consideration for securities distributed or to be distributed as part of the same transaction, directly or indirectly, to holders of securities issued by such person or secured by the assets of such person; or

(5) A merger or consolidation.

(b) The commissioner, or his or her designee, is authorized to consider and conduct a fairness hearing upon any plan of reorganization, recapitalization, or refinancing of a corporation or limited liability company organized under the laws of this state, or

having its principal place of business within this state, when the plan is proposed by the corporation, limited liability company, or by any of its shareholders, members, or creditors and contains a proposal to issue securities in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange, or partly for cash: *Provided*, That this section does not apply to plans of reorganization, recapitalization, or refinancing of a corporation or limited liability company wherein there are no proposed issuance of securities.

(c) Prior to any fairness hearing authorized by this section, a corporation or limited liability company, shareholder, member, or creditor shall apply to the commissioner to approve the issuance of securities or to the delivery of other consideration pursuant to a plan of reorganization, recapitalization, or refinancing. The application shall be on a form and be accompanied by such documents and filing fees as shall be required by rule or order of the commissioner: *Provided*, That the filing fees may not exceed \$500. The applicant shall provide sufficient information to the commissioner regarding the value of the securities, claims, or interests to be exchanged and the securities to be issued in the transaction. The commissioner shall inform the applicant of any deficiencies in the application or of any additional information or documents required. The commissioner may require the applicant to amend or resubmit the application to comply with any rule or order of the commissioner prior to setting a date for the fairness hearing. The commissioner, or his or her designee, is required to hold a fairness hearing on any application for approval within 30 days after the filing of a complete application and supporting documents required by any rule or order of the commissioner.

(d) All persons to whom it is proposed securities be issued or other consideration be delivered by the applicant shall have the right to appear at the fairness hearing. Holders of a majority of the applicant's debts or holders of a majority of any outstanding class of securities issued by the applicant shall have the right to appear. The applicant shall provide notice in person or by United States mail, postage prepaid, providing the time and place of the fairness hearing to all persons to whom it is proposed securities be issued

or other consideration be delivered in such exchange, not less than 10 days prior to such hearing. The applicant shall file evidence of notice required by this subsection with the commissioner, or his or her designee, prior to the fairness hearing.

(e) Any fairness hearing conducted by the commissioner, or his or her designee, under this section may be conducted in person, by video conference, by telephone conference, or by any other mode deemed appropriate by any rule or order of the commissioner.

(f) Within 10 business days after holding the fairness hearing, the commissioner, or his or her designee, shall issue a statement of findings of fairness and his or her approval or a statement that his or her approval will not be forthcoming.

(g) Securities issued in accordance with a plan approved by the commissioner, or his or her designee, pursuant to this section are exempt from the registration requirement provided in the provisions of §32-3-301, *et seq.* of this code.

(h) The commissioner is authorized to invoice the applicant for the costs of conducting the fairness hearing and the preparation of the statement of findings.



CHAPTER 219

(Com. Sub. for H. B. 2434 - By Delegates Hornby, Maynor, Crouse, Willis, Ward, Chiarelli, Holstein, Funkhouser, and Kimble)

[Passed April 11, 2025; in effect 90 days from passage (July 10, 2025)]
[Approved by the Governor on April 29, 2025.]

AN ACT to amend and reenact §55-3C-1 and §55-3C-2 of the Code of West Virginia, 1931, as amended, and adding thereto the following new sections, designated §55-3C-3, §55- 3C-4, §55-3C-5, and §55-3C-6, all relating to squatting; establishing the Stop Squatters Act; providing a short title and findings; amending the definition of squatting and adding a definition for squatter; providing a limited alternative remedy to remove unauthorized persons from residential and commercial real properties; providing for the immediate removal by a law-enforcement agency upon request of the property owner of any person unlawfully occupying a residential dwelling or commercial building if certain conditions are met; providing a civil cause of action for wrongful removal; establishing misdemeanor and felony offenses for unlawfully occupying and intentionally damaging a residential dwelling or commercial building and providing penalties upon conviction thereof; establishing a misdemeanor offense for knowingly presenting a false document purporting to convey real property and providing penalties upon conviction thereof; and establishing a felony offense for any person who knowingly lists or advertises residential real property or a commercial building for sale or renting without legal title or authority and providing penalties upon conviction thereof

Be it enacted by the Legislature of West Virginia:

ARTICLE 3C. STOP SQUATTERS ACT.**§55-3C-1. Short title; findings.**

(a) This article shall be known and may be cited as the “Stop Squatters Act”.

(b). The Legislature finds that the right to exclude others from entering and the right to direct others to immediately vacate a person’s residential or commercial property are fundamental property rights.

§55-3C-2. Squatters defined: squatters not tenants; squatting constitutes criminal trespass; petition and eviction not appropriate remedies for squatters; remedy is arrest for trespass.

(a) “Squatter” means a person unlawfully occupying a dwelling unit or other structure who is not entitled under a rental or lease agreement or who is not authorized by the tenant or owner to occupy that dwelling unit or structure. “Squatter” does not include a tenant who holds over in a periodic tenancy as described in §37-6-5 of this code, or an owner.

(b) “Squatting” means the act of being a squatter. Squatting is synonymous with trespass, and is a criminal act under §61-3B-2 or §61-3B-3 of this Code.

(c) Squatters are not considered tenants for purposes of this code and are not entitled to eviction proceedings afforded to lawful tenants. A Court of this state shall not require the use of eviction, or a similar procedure such as those found under §55-3A-1, *et seq.* or §55-3B-1, *et seq.* of this Code, by an owner in any instance involving the removal of a squatter from possession of a property.

§55-3C-3. Limited Alternative Remedy to Remove Squatter from Residential and Commercial Real Properties.

(a) A property owner or their authorized agent may request, from any law-enforcement officer having authority to act in the jurisdiction where the subject property is located, the immediate

removal of any person squatting in a residential dwelling or commercial building if the following conditions are met:

(1) The requesting person is the property owner or authorized agent;

(2) The real property includes a residential dwelling or commercial building;

(3) An unauthorized person or persons are unlawfully occupying the property;

(4) The property was not open to the public at the time of entry;

(5) The property owner or their authorized agent has directed the unauthorized person(s) to leave;

(6) The unauthorized person is not current or former owners or current or former lawful tenants;

(7) The unauthorized person is not immediate family members of the property owner or tenants; and

(8) No pending litigation related to the subject property exists between the property owner and the unauthorized person(s).

(b) To request the immediate removal pursuant to this section, the property owner or authorized agent shall submit a completed and verified complaint to remove persons unlawfully occupying real property ("complaint") to a law-enforcement officer having authority to act in the jurisdiction of the subject property.

(c) Upon receipt of the complaint, the law-enforcement agency to which the complaint was submitted shall conduct preliminary fact-finding, which may include reviewing any alleged lease agreement, interviewing relevant individuals, and other relevant inquiries to ascertain the validity of the complaint. If the preliminary fact-finding indicates probable cause that the conditions outlined in subsection (a) of this section are met, then the law-enforcement agency shall serve a notice to immediately

vacate upon the unlawful occupants and put the owner in possession of the real property.

(d) The law-enforcement agency is entitled to a fee for service of a notice pursuant to subsection (c) of this section. Upon serving the notice, the property owner or their authorized agent may request the law-enforcement agency to remove the unauthorized person if they do not vacate the property when ordered to do so or request that they remain at the property to ensure the safety of all parties during the removal of the person property of the unlawful occupants.

(e) This section does not limit any other property owner rights or the authority of law-enforcement.

§55-3C-4. Criminal mischief; penalties.

(a) A person who unlawfully occupies a residential dwelling or commercial building consistent with this article and as a result of the unlawful occupation causes damage to the real property, its fixtures, or personal property of the owner in an amount less than \$1,000 is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for a term not to exceed one year or fined not to exceed \$2,500, or both fined and confined.

(b) A person who unlawfully occupies a residential dwelling or commercial building consistent with this article and as a result of the unlawful occupation causes damage to the real property, its fixtures, or personal property of the owner in an amount more than \$1,000 in damages commits a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than 10 years, or in the discretion of the court be confined in jail not more than one year and fined not more than \$2,500.

§55-3C-5. Making false statement to detain real property; false complaint; civil causes of action; immunity.

(a) A property owner or their authorized agent who knowingly submits a complaint pursuant to this article in bad faith is subject to criminal prosecution for false swearing, and shall indemnify the law-enforcement agency and its agents for all costs and damages

which may arise from a law-enforcement officer's good faith actions pursuant to this article.

(b) A civil cause of action for wrongful removal may be brought by a person who has been removed from a property pursuant to this article, with remedies including restoration of possession, actual costs, damages, and attorney fees.

(c) In a civil action against a law-enforcement officer or law-enforcement agency based on action taken pursuant to this article, any immunity authorized by this code or other applicable authority may be asserted.

§55-3C-6. Fraudulent sale or lease of residential real property.

Any person who knowingly lists or advertises residential real property or a commercial building for sale or renting without legal title or authority is guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than 10 years, or, in the discretion of the court, be confined in jail not more than one year and shall be fined not more than \$2,500.



CHAPTER 220

(S. B. 75 - By Senators Rucker, Barrett, Thorne, and Willis)

[Passed April 11, 2025; in effect 90 days from passage (July 10, 2025)]

[Approved by the Governor on April 24, 2025.]

AN ACT to amend and reenact §29-22A-10d, §29-22A-10e, and §29-22C-27a of the Code of West Virginia, 1931, as amended, relating to the racetrack video lottery changes in distribution of net terminal income; changes in distribution of adjusted gross receipts in the lottery racetrack table games; and restoring moneys previously removed from net terminal income in 2014.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10d. Changes in distribution of net terminal income; distributions from excess lottery fund.

(a) Notwithstanding any provision of §29-22A-10(b) of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, the commission may transfer up to \$9 million as actual costs and expenses to the Licensed Racetrack Modernization Fund.

(b) Notwithstanding any provision of §29-22A-10(c) of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except those distributions to be made pursuant to §29-22A-10(c) (1), (2), (3), (4), (5) and (7) of this code, shall be reduced by 100 percent. Payments may not be made pursuant to §29-22A-10 of this code, other than those excepted by this subsection, and are made in lieu thereof in an amount to be determined by appropriation from the State Excess Lottery Revenue Fund.

(c) The total amount of reductions resulting from subsection (b) of this section shall be paid into the State Excess Lottery Revenue Fund, created by §29-22-18a of this code.

(d) Notwithstanding any other provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance with appropriations.

(e) Prior to payment of any appropriation made pursuant to this section, debt service payments payable from the State Excess Lottery Fund shall first be paid in accordance with the provisions of §29-22A-18a, §29-22A-18d, and §29-22A-18e of this code and in the priority as defined by §29-22A-18f(c) of this code.

(f) Notwithstanding any other provision of this code to the contrary, after payment of debt service from the State Excess Lottery Revenue Fund, all other distributions required by §29-22A-18a of this code and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.

(g)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the provisions of §29-22A-10(c)(9)(B) of this code, upon certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter 23 of this code, has been paid or provided for in its entirety, the transfers made to the Workers' Compensation Debt Reduction Fund pursuant to §29-22A-10(c)(9)(A) of this code shall expire and those funds shall remain in the State Excess Lottery Revenue Fund subject to appropriation.

(2)(A) Notwithstanding any provision of §29-22A-10(c)(9)(B) of this code or any other provision of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order, redirect deposits of revenues derived from net terminal income imposed under this article, for any period commencing after February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to the funds

otherwise mandated in this article, in §23-2D-1 *et seq.* of this code, or in any other provision of this code.

(B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of §29-22A-10(c)(9)(B) of this code or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect one half of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in §23-2D-1 *et seq.* of this code, or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter 23 of this code, has been paid or provided for in its entirety.

§29-22A-10e. Changes in distribution of excess net terminal income; distributions from excess lottery fund.

(a) Notwithstanding any provision of §29-22A-10b(a) of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except those distributions to be made pursuant to §29-22A-10b(a) (1), (2), (3), (4), (5) and (7) of this code, shall be reduced by 100 percent. Payments shall not be made pursuant to §29-22A-10b of this code, other than those excepted by this subsection, and are made in lieu thereof in an amount to be determined by appropriation from the State Excess Lottery Revenue Fund.

(b) The total amount of reductions resulting from subsection (a) of this section shall be paid into the State Excess Lottery Revenue Fund created in §29-22-18a of this code.

(c) Notwithstanding any other provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance with appropriations.

(d) Prior to payment of any appropriation made pursuant to this section, debt service payments payable from the State Excess Lottery Fund shall first be paid in accordance with the §29-22-18a, §29-22-18d, and §29-22-18e of this code and in the priority as defined by §29-22-18f(c) of this code.

(e) Notwithstanding any other provision of this code to the contrary, after payment of debt service from the State Excess Lottery Revenue Fund, all other distributions required by §29-22-18a of this code and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.

(f)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the provisions of §29-22A-10b(9)(a)(B) of this code, upon certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter 23 of this code, has been paid or provided for in its entirety, the transfers made to the Workers' Compensation Debt Reduction Fund pursuant to §29-22A-10b(a)(9)9A) of this code shall expire and those funds shall remain in the State Excess Lottery Revenue Fund subject to appropriation.

(2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision of §29-22A-10b(a)(9)(B) of this code or any other provision of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order, redirect deposits of revenues derived from net terminal income imposed under this article, for any period commencing after February 29, 2016, and ending before July 1, 2016, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in §23-2D-1 *et seq.* of this code, or in any other provision of this code.

(B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of §29-22A-10b(a)(9)(B) of this code or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect one half of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2016, and ending

before July 1, 2017, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in §23-2D-1 *et seq.* of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter 23 of this code, has been paid or provided for in its entirety.

ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.

§29-22C-27a. Changes in distribution of adjusted gross receipts; distributions from excess lottery fund.

(a) Notwithstanding any provision of §29-22C-27 of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, the distribution directed pursuant to subdivision (1), subsection (d) of that section shall be reduced by 100 percent.

(b) The total amount of reductions resulting from subsection (a) of this section shall be paid into the State Excess Lottery Revenue Fund created in §29-22-18a of this code.

(c) Notwithstanding any other provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance with appropriations.

(d) Prior to payment of any appropriation made pursuant to this section, debt service payments payable from the State Excess Lottery Fund shall first be paid in accordance with the provisions of §29-22-18a, §29-22-18d, and §29-22-18e of this code and in the priority as defined by §29-22-18f(c) of this code.

(e) Notwithstanding any other provision of this code to the contrary, after payment of debt service from the State Excess Lottery Revenue Fund, all other distributions required by §29-22-18a of this code and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.



CHAPTER 221

(Com. Sub. for S. B. 576 - By Senator Barrett)

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]
[Approved by the Governor on April 28, 2025.]

AN ACT to amend and reenact §29-22D-3 and §29-22D-4 of the Code of West Virginia, 1931, as amended; and to amend the code by adding five new sections, designated §29-22D-15a, §29-22D-17a, §29-22D-17b, §29-22D-17c, and §29-22D-25, relating to fixed odds racing; authorizing fixed odds racing in horse and dog racing; defining terms; creating a special revenue account entitled Fixed Odds Horse Racing Wagering Purse Supplement Fund; providing for administration of the fund; providing for distribution of certain proceeds into the fund; providing for use of the funds; allowing funds to be invested; providing for distribution of funds; creating a special revenue account entitled Fixed Odds Dog Racing Wagering Purse Supplement Fund; providing for administration of the fund; providing for distribution of certain proceeds into the fund; providing for use of the funds; allowing funds to be invested; providing for distribution of funds; precluding certain individuals from wagering; making conforming amendments; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22D. WEST VIRGINIA LOTTERY SPORTS WAGERING ACT.

§29-22D-3. Definitions.

For the purposes of this article, the following terms have the meanings ascribed to them in this section:

"Adjusted gross sports wagering receipts" means an operator's gross sports wagering receipts from West Virginia Lottery sports wagering, less winnings paid to wagerers in such games.

"Collegiate sport or athletic event" means a sport or athletic event offered or sponsored by, or played in connection with, a public or private institution that offers educational services beyond the secondary level.

"Commission" or "State Lottery Commission" means the West Virginia Lottery Commission, created by §29-22-1 *et seq.* of this code.

"Director" means the Director of the West Virginia State Lottery Commission, appointed pursuant to §29-22-6 of this code.

"E-sports event" means leagues, competitive circuits, tournaments, or similar competitions where individuals or teams play video games, typically for spectators, either in person or online, for the purpose of prizes, money, or entertainment.

"Fixed odds wager on dog racing" means a sum of money or representation of value risked by a player on an occurrence associated with a sports event involving dog races for which the outcome is uncertain. The term includes single-race bets, teaser bets, moneyline bets, in-race wagering, proposition bets, straight bets, parlays, or any other wager type approved by the West Virginia Lottery.

"Fixed odds wager on horse racing" means a sum of money or representation of value risked by a player on an occurrence associated with a sports event involving racehorses for which the outcome is uncertain. The term includes single-race bets, teaser bets, moneyline bets, in-race wagering, proposition bets, straight bets, parlays, or any other wager type approved by the West Virginia Lottery.

"Fixed odds wagering on dog racing" means the acceptance of wagers on a sports event of live dog racing with predetermined odds. Fixed odds wagering on dog races shall only occur as provided in this article. Fixed odds wagers on dog racing may be

combined with other wagers on other sports events as authorized in this article.

"Fixed odds wagering on horse racing" means the acceptance of wagers on a sports event of live horse racing with predetermined odds. Fixed odds wagering on horse racing shall only occur as provided in this article. Fixed odds wagers on horse races may be combined with other wagers on other sports events as authorized in this article.

"Gaming equipment" or "sports wagering equipment" means any mechanical, electronic, or other device, mechanism, or equipment, and related supplies used or consumed in the operation of West Virginia Lottery sports wagering at a licensed gaming facility including, but not limited to, a kiosk installed to accept sports wagers.

"Gaming facility" means a designated area on the premises of an existing historic resort hotel, licensed under §29-25-1 *et seq.* of this code, to operate video lottery and table games or the facility of an entity authorized to operate racetrack video lottery machines pursuant to §29-22A-1 *et seq.* of this code.

"Government" means any governmental unit of a national, state, or local body exercising governmental functions, other than the United States government.

"Gross sports wagering receipts" means the total gross receipts received by a licensed gaming facility from sports wagering.

"License" means any license applied for or issued by the commission under this article including, but not limited to:

(A) A license to act as agent of the commission in operating West Virginia Lottery sports wagering at a licensed gaming facility (operator license or West Virginia Lottery sports wagering license);

(B) A license to supply a gaming facility licensed under this article to operate sports wagering with sports wagering equipment or services necessary for the operation of sports wagering (supplier license);

(C) A license to be employed at a racetrack or gaming facility licensed under this article to operate West Virginia Lottery sports wagering when the employee works in a designated gaming area that has sports wagering or performs duties in furtherance of or associated with the operation of sports wagering at the licensed gaming facility (occupational license); or

(D) A license to provide management services under a contract to a gaming facility licensed under this article to operate sports wagering (management services provider license).

"Licensed gaming facility" means a designated area on the premises of an existing historic resort hotel, pursuant to §29-25-1 *et seq.* of this code, or the facility of an entity authorized to operate racetrack video lottery machines, pursuant to §29-22A-1 *et seq.* of this code licensed under this article to conduct West Virginia Lottery sports wagering.

"Lottery" means the public gaming systems or games regulated, controlled, owned, and operated by the State Lottery Commission in the manner provided by general law, as provided in this article, §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et seq.*, §29-22C-1 *et seq.*, and §29-25-1 *et seq.* of this code.

"National criminal history background check system" means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification.

"Operator" means a licensed gaming facility which has elected to operate a sports pool and other authorized West Virginia Lottery sports wagering activities.

"Professional sport or athletic event" means an event at which two or more persons participate in sports or athletic events and receive compensation in excess of actual expenses for their participation in such event.

"Sports event" or "sporting event" means any professional sport or athletic event, any collegiate sport or athletic event, motor race event, e-sports event, or any other special event authorized by

the commission under this article. A "sports event" or "sporting event" includes "horse racing" or "dog racing" as defined in §19-23-3 of this code for the purpose of conducting "fixed odds wagering on horse racing" or "fixed odds wagering on dog racing" as defined in this article.

"Sports pool" means the business of accepting wagers on any sports event by any system or method of wagering.

"Sports wagering account" means a financial record established by a licensed gaming facility for an individual patron in which the patron may deposit and withdraw funds for sports wagering and other authorized purchases, and to which the licensed gaming facility may credit winnings or other amounts due to that patron or authorized by that patron.

"Sports wagering agreement" means a written agreement between the commission and one or more other governments whereby persons who are physically located in a signatory jurisdiction may participate in sports wagering conducted by one or more operators licensed by the signatory governments.

"Sports wagering fund" means the special fund in the State Treasury created in §29-22D-17 of this code.

"Supplier" means a person that requires a supplier license to provide a sports wagering licensee with goods or services to be used in connection with operation of West Virginia Lottery sports wagering.

"Wager" means a sum of money or thing of value risked on an uncertain occurrence.

"West Virginia Lottery sports wagering" or "sports wagering" means the business of accepting wagers on sporting events, and other events, the individual performance statistics of athletes in a sporting event or other events, or a combination of any of the same by any system or method of wagering approved by the commission including, but not limited to, mobile applications and other digital platforms that utilize communications technology to accept wagers originating within this state. The term includes, but is not limited

to, exchange wagering, parlays, over-under, moneyline, pools, fixed odds wagering on horse racing, fixed odds wagering on dog racing, and straight bets. The term does not include:

(A) Pari-mutuel betting on the outcome of horse or dog races authorized by §19-23-12a and §19-23-12d of this code;

(B) Lottery games of the West Virginia State Lottery authorized by §29-22-1 *et seq.* of this code;

(C) Racetrack video lottery authorized by §29-22A-1 *et seq.* of this code;

(D) Limited video lottery authorized by §29-22B-1 *et seq.* of this code;

(E) Racetrack table games authorized by §29-22C-1 *et seq.* of this code;

(F) Video lottery and table games authorized by §29-25-1 *et seq.* of this code; and

(G) Daily Fantasy Sports (DFS).

"West Virginia Lottery sports wagering license" means authorization granted under this article by the commission to a gaming facility that is already licensed under §29-22A-1 *et seq.* or §29-25-1 *et seq.* of this code, which permits the gaming facility as an agent of the commission to operate West Virginia Lottery sports wagering in one or more designated areas or in one or more buildings owned by the licensed gaming facility on the grounds where video lottery is conducted by the licensee or through any other authorized platform developed by the gaming facility. This term is synonymous with "operator's license".

§29-22D-4. Commission duties and powers.

(a) In addition to the duties set forth elsewhere in this article, §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et seq.*, §29-22C-1 *et seq.*, and §29-25-1 *et seq.* of this code, the commission may regulate sports pools and the conduct of sports wagering under this article.

(b) The commission shall examine the regulations implemented in other states where sports wagering is conducted and shall, as far as practicable, adopt a similar regulatory framework through promulgation of rules.

(c) The commission may, pursuant to §29A-1-1 *et seq.* and §29A-3-1 *et seq.* of this code, promulgate or otherwise enact any legislative, interpretive, and procedural rules the commission considers necessary for the successful implementation, administration, and enforcement of this article.

(1) Rules promulgated by the commission may include, but are not limited to, those governing the acceptance of wagers on a sports event or a series of sports events; acceptance of fixed odds wagering on horse racing or dog racing; maximum wagers which may be accepted by an operator from any one patron on any one sports event; type of wagering tickets which may be used; method of issuing tickets; method of accounting to be used by operators; types of records which shall be kept; use of credit and checks by patrons; type of system for wagering; protections for patrons placing wagers; and promotion of social responsibility, responsible gaming, and inclusion of the statement, "If you or someone you know has a gambling problem and wants help, call 1-800 GAMBLER," in every designated area approved for sports wagering and on any mobile application or other digital platform used to place wagers.

(2) The commission shall establish minimum internal control standards (MICS) and approve minimum internal control standards proposed by licensed operators for administration of sports wagering operations, wagering equipment and systems, or other items used to conduct sports wagering, as well as maintenance of financial records and other required records.

(d) The commission shall propose a rule for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code that enumerates the reasons for which patrons of sports gaming may be banned from engaging in sports betting. The list of reasons for which patrons may be banned shall include, but not be limited to:

(1) A prior conviction under §61-2-15a of this code;

(2) A prior violation of an order of the commission; or

(3) If the commission determines that the person poses a threat to the safety of patrons or participants in a sporting event or determines that the person has engaged in a pattern of conduct of harassing a sports official, coach, or any participants.

(e) The rule shall also set forth the procedure by which complaints against patrons are lodged with and investigated by the commission. The commission shall notify a patron of the commission's intent to ban the patron from sports betting, and the patron is entitled to a hearing before the commission pursuant to §29A-5-1 *et seq.* of this code.

(f) The commission shall determine the eligibility of a person to hold or continue to hold a license, shall issue all licenses, and shall maintain a record of all licenses issued under this article.

(g) The commission shall levy and collect all fees, surcharges, civil penalties, and weekly tax on adjusted gross sports wagering receipts imposed by this article, and deposit all moneys into the sports wagering fund, except as otherwise provided under this article.

(h) The commission may sue to enforce any provision of this article or any rule of the commission by civil action or petition for injunctive relief.

(i) The commission may hold hearings, administer oaths, and issue subpoenas or subpoenas duces tecum: *Provided*, That all hearings shall be conducted pursuant to the provisions of the State Administrative Procedures Act, §29A-2-1, *et seq.* of this code and the Lottery Administrative Appeal Procedures, W.Va. CSR §179-2-1, *et seq.*

(j) The commission may exercise any other powers necessary to effectuate the provisions of this article and the rules of the commission.

§29-22D-15a. Fixed odds wagering on horse racing or dog racing.

(a) Fixed odds wagering on horse racing or dog racing is hereby authorized. Acceptance of fixed odds wagering on horse racing or dog racing shall only be conducted by a licensed operator, licensed gaming facility, or management services provider, as defined in this article.

(b) Any content authorized for fixed odds wagering on horse races from outside of West Virginia to be offered for wagering by a licensed operator, licensed gaming facility, or management services provider, shall comply with the Interstate Horseracing Act of 1978, 15 U.S.C. 3001, *et seq.*

(c) Any content authorized for fixed odds wagering on horse races from West Virginia, or fixed odds wagering on dog races from West Virginia, to be offered for wagering by a licensed operator, licensed gaming facility, or management services provider, shall require the consent of the host racetrack and recognized horsemen's group for horse races.

§29-22D-17a. Fixed Odds Horse Racing Wagering Purse Supplement Fund creation; distribution of funds.

(a) There is hereby created within the State Treasury a fund known as the West Virginia Lottery Fixed Odds Horse Racing Wagering Purse Supplement Fund. The fund shall be administered by the Director of the West Virginia Lottery.

(b) Ten percent of the licensee's adjusted gross wagering receipts from fixed odds wagering on horse racing shall be collected in the same manner as prescribed by §29-22D-16 of this code. The funds shall be distributed as follows:

(1) Of the 10 percent collected from the licensee's adjusted gross wagering receipts from fixed odds wagers on horse races excluding parlays, 25 percent of such collections shall be deposited into the West Virginia Lottery Fixed Odds Horse Racing Wagering Purse Supplement Fund created by this section.

(2) Of the 10 percent collected from the licensee's adjusted gross wagering receipts from fixed odds wagers on horse races excluding parlays, 25 percent of such collections shall be collected and distributed equally among the licensed thoroughbred racetracks in this state.

(3) Of the 10 percent collected from the licensee's adjusted gross wagering receipts from parlays, 25 percent of the portion of such collections wagered on horse race events in the parlays shall be deposited into the West Virginia Lottery Fixed Odds Horse Racing Wagering Purse Supplement Fund created by this section. For the avoidance of doubt, only the horse racing portion(s) of any parlay bet shall be included in this calculation.

(4) Of the 10 percent collected from the licensee's adjusted gross wagering receipts from parlays, 25 percent of the portion of such collections wagered on horse race events in the parlays shall be collected and distributed equally among licensed thoroughbred racetracks in this state. For the avoidance of doubt, only the horse racing portion(s) of any parlay bet shall be included in this calculation.

(c) All moneys collected under this section by the West Virginia Lottery from fixed odds wagering on horse racing shall be deposited with the State Treasurer in the West Virginia Lottery Fixed Odds Horse Racing Wagering Purse Supplement Fund. The fund shall be an interest-bearing account with all interest or other return earned on the money of the fund credited to and deposited in the fund. All expenses of the West Virginia Lottery incurred in the administration and enforcement of this article shall be paid from the West Virginia Sports Wagering Fund pursuant to §29-22D-17(b) of this code.

(d) Moneys in the fund shall be invested by the State Treasurer in the same manner as moneys in the state general fund. Interest earned on the investments of moneys in the fund shall be deposited in and credited to the fund.

(e) Within 30 days of the beginning of each fiscal year, 50 percent of the amount of moneys in the fund shall be distributed

into the special funds created by thoroughbred racetrack licensees to be used for the payment of regular purses offered for thoroughbred racing and established under §19-23-9(b)(1) of this code, and 50 percent shall be distributed equally among licensed thoroughbred racetracks in this state.

(f) In distributing the funds collected under this section into the special funds of the thoroughbred racetrack licensees to be used for the payment of regular purses offered for thoroughbred racing established under §19-23-9(b)(1) of this code, the Lottery Director shall allocate proportionally based upon the total handle, or amount wagered, at each licensed thoroughbred racetrack, as calculated annually by the West Virginia Racing Commission, for the preceding calendar year.

§29-22D-17b. Fixed Odds Dog Racing Wagering Purse Supplement Fund creation; distribution of funds.

(a) There is hereby created in the State Treasury a fund known as the West Virginia Lottery Fixed Odds Dog Racing Wagering Purse Supplement Fund. The fund shall be administered by the Director of the West Virginia Lottery.

(b) Ten percent of the licensee's adjusted gross wagering receipts from fixed odds wagering on dog racing shall be collected in the same manner as prescribed by §29-22D-16 of this code. The funds shall be distributed as follows:

(1) Of the 10 percent collected from the licensee's adjusted gross wagering receipts from fixed odds wagers on dog races, excluding parlays, 25 percent of such collections shall be deposited into the West Virginia Lottery Fixed Odds Dog Racing Wagering Purse Supplement Fund established by this section.

(2) Of the 10 percent collected from the licensee's adjusted gross wagering receipts from fixed odds wagers on dog races excluding parlays, 25 percent of such collections shall be collected and distributed equally among the licensed dog racetracks in this state.

(3) Of the 10 percent collected from the licensee's adjusted gross wagering receipts from fixed odds wagers on dog races from parlays, 25 percent of the portion of such collections wagered on dog race events in the parlays shall be deposited into the West Virginia Lottery Fixed Odds Dog Racing Wagering Purse Supplement Fund created by this section. For the avoidance of doubt, only the dog racing portion(s) of any parlay bet shall be included in this calculation.

(4) Of the 10 percent collected from the licensee's adjusted gross wagering receipts from parlays, 25 percent of the portion of such collections wagered on dog race events in the parlays shall be collected and distributed equally among licensed dog racetracks in this state. For the avoidance of doubt, only the dog racing portion(s) of any parlay bet shall be included in this calculation.

(c) Subject to the provisions of subsection (b) of this section, all moneys collected under this section by the West Virginia Lottery from fixed odds wagering on dog racing shall be deposited with the State Treasurer in the West Virginia Lottery Fixed Odds Dog Racing Wagering Purse Supplement Fund. The fund shall be an interest-bearing account with all interest or other return earned on the money of the fund credited to and deposited in the fund. All expenses of the West Virginia Lottery incurred in the administration and enforcement of this article shall be paid from the West Virginia Sports Wagering Fund pursuant to §29-22D-17(b) of this code.

(d) Moneys in the fund shall be invested by the State Treasurer in the same manner as moneys in the state General Fund. Interest earned on the investments of moneys in the fund shall be deposited in and credited to the fund.

(e) Within 30 days of the beginning of each fiscal year, 50 percent of the amount of moneys in the fund shall be distributed to the West Virginia Greyhound Breeding Development Fund created under §19-23-10 of this code, and 50 percent shall be distributed equally among licensed dog racetracks in this state.

§29-22D-17c. Use of funds by licensed racetrack facilities.

Any funds distributed to licensed racetracks under §29-22D-17a and §29-22D-17b of this code may be expended by such licensed racetracks to support operations in this state authorized under §19-23-1 *et seq.*, §29-22A-1 *et seq.*, §29-22C-1 *et seq.*, §29-22D-1 *et seq.*, or §29-22E-1 *et seq.*, of this code, or for capital improvements at facilities located in this state that are on or contiguous to the premises of the licensed racetrack.

§29-22D-25. Wagering by racing officials not allowed.

An operator shall not knowingly accept a wager from a person who is an owner or trainer of a racehorse or dog, or a jockey, including their employees, or a racing official, who is participating in the horse racing or dog racing sports event, as applicable, on which the person is attempting to place the wager. For the purposes of this section, a racing official shall mean: stewards, placing judges, clerk of scales, starter, timer, paddock judge, Racing Commission veterinarian(s), association's racing secretary and assistants, horse identifier, clocker, and jockey room custodian.



CHAPTER 222

**(Com. Sub. for H. B. 3012 - By Delegates Zatezalo, Criss,
Anderson, and McGeehan)**

[Passed April 9, 2025; in effect 90 days from passage (July 8, 2025)]
[Approved by the Governor on April 29, 2025.]

AN ACT to amend and reenact §29-22A-10 and §29-22A-10b of the Code of West Virginia, 1931, as amended, relating to the racetrack video lottery and the distributions of video lottery net terminal and excess net terminal income to municipalities and counties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

(a) The commission shall provide to manufacturers, or applicants applying for a manufacturer's permit, the protocol documentation data necessary to enable the respective manufacturer's video lottery terminals to communicate with the commission's central computer for transmitting auditing program information and for activation and disabling of video lottery terminals.

(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission 30 days' advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission:

(1) The commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack and the resulting amount after the deduction is the net terminal income. The amount deducted for administrative costs and expenses of the commission may not exceed four percent of gross terminal income: *Provided*, That any amounts deducted by the commission for its actual costs and expenses that exceeds its actual costs and expenses shall be deposited into the State Lottery Fund. For the fiscal years ending June 30, 2011 through June 30, 2030, the term "actual costs and expenses" may include transfers of up to \$9 million in surplus allocations for each fiscal year, as calculated by the commission when it has closed its books for the fiscal year, to the Licensed Racetrack Modernization Fund created by subdivision (2), of this subsection. For all fiscal years beginning on or after July 1, 2001, the commission shall not receive an amount of gross terminal income in excess of the amount of gross terminal income received during the fiscal year ending on June 30, 2001, but four percent of any amount of gross terminal income received in excess of the amount of gross terminal income received during the fiscal year ending on June 30, 2001, shall be deposited into the fund established in §29-22-18a of this code; and

(2) A Licensed Racetrack Modernization Fund is created within the lottery fund. For all fiscal years beginning on or after July 1, 2011, and ending with the fiscal year beginning July 1, 2030, the commission shall deposit such amounts as are available according to subdivision (1) of this subsection into a separate facility modernization account maintained within the Licensed

Racetrack Modernization Fund for each racetrack. Each racetrack's share of each year's deposit shall be calculated in the same ratio as each racetrack's apportioned contribution to the four percent administrative costs and expenses allowance provided for in subdivision (1) of this subsection for that year. For each \$2 expended by a licensed racetrack for facility modernization improvements or capital improvements at facilities located in this state that are on or contiguous to the premises of the licensed racetrack, having a useful life of three or more years and placed in service after July 1, 2011, the licensed racetrack shall receive \$1 in recoupment from its facility modernization account. If the licensed racetrack's facility modernization account contains a balance in any fiscal year, the unexpended balance from that fiscal year will be available for matching for one additional fiscal year, after which time, the remaining unused balance carried forward shall revert to the lottery fund. For purposes of this section, the term "facility modernization improvements" includes acquisitions of new and unused video lottery terminals and related equipment, and the term "capital improvements" means real property that is expected to replace or modernize buildings, equipment, machinery and other tangible property used in connection with the operation of the gaming, hospitality, or entertainment at the facility. Video lottery terminals financed through the recoupment provided in this subdivision must be retained by the licensee in its West Virginia licensed location for a period of not less than five years from the date of initial installation.

(c) The amount resulting after the deductions required by subsection (b) of this section constitutes net terminal income that shall be divided as set out in this subsection. For all fiscal years beginning on or after July 1, 2001, any amount of net terminal income received in excess of the amount of net terminal income received during the fiscal year ending on June 30, 2001, shall be divided as set out in §29-22A-10b of this code. The licensed racetrack's share is in lieu of all lottery agent commissions and is considered to cover all costs and expenses required to be expended by the licensed racetrack in connection with video lottery operations. The division shall be made as follows:

(1) The commission shall receive 30 percent of net terminal income, which shall be paid into the State Lottery Fund as provided in §29-22A-10a of this code;

(2) Until July 1, 2005, 14 percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee, and used for payment of regular purses in addition to other amounts provided for in §19-23-1 *et seq.* of this code, on and after July 1, 2005, the rate shall be seven percent of net terminal income;

(3) The county where the video lottery terminals are located shall receive two percent of the net terminal income: *Provided, That:*

(A) Beginning July 1, 1999, and thereafter, any amount in excess of the two percent received during the fiscal year 1999 by a county in which a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1999, shall be divided as follows:

(i) The county shall receive 50 percent of the excess amount; and

(ii) The municipalities of the county shall receive 50 percent of the excess amount, said 50 percent to be divided among the municipalities on a per capita basis as determined by the most recent decennial United States census of population; and

(B) Beginning July 1, 1999, and thereafter, any amount in excess of the two percent received during the fiscal year 1999 by a county in which a racetrack other than a racetrack described in paragraph (A) of this subdivision is located and where the racetrack has been located in a municipality within the county since on or before January 1, 1999, shall be divided, if applicable, as follows:

(i) The county shall receive 50 percent of the excess amount; and

(ii) The municipality shall receive 50 percent of the excess amount; and

(C) In a county in which a racetrack other than a racetrack described in paragraphs (A) or (B) of this subdivision is located and where the racetrack has been located within that county since on or before January 1, 1999, and where the racetrack is not located in a municipality, the two percent of net terminal income shall be divided, if applicable, as follows:

(i) The county shall receive one percent; and

(ii) The remaining one percent shall be distributed in equal shares to all municipalities within the county. Per capita population has no effect on distributions under this paragraph;

(4) One percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the Racing Commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) The West Virginia Thoroughbred Development Fund created pursuant to §19-23-13b of this code and the West Virginia Greyhound Breeding Development Fund created pursuant to §19-23-10 of this code shall receive an equal share of a total of not less than one and one-half percent of the net terminal income;

(6) The West Virginia Racing Commission shall receive one percent of the net terminal income which shall be deposited and used as provided in §19-23-13c of this code;

(7) A licensee shall receive 46 and one-half percent of net terminal income;

(8)(A) The Tourism Promotion Fund established in §5B-2-12 of this code shall receive three percent of the net terminal income: *Provided*, That for the fiscal year beginning July 1, 2003, the tourism commission shall transfer from the Tourism Promotion Fund \$5 million of the three percent of the net terminal income described in this section and §29-22A-10b of this code into the fund administered by the West Virginia Economic Development Authority pursuant to §31-15-7 of this code, \$5 million into the Capitol Renovation and Improvement Fund administered by the

Department of Administration pursuant to §5A-4-6 of this code, and \$5 million into the Tax Reduction and Federal Funding Increased Compliance Fund; and

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for each fiscal year beginning after June 30, 2004, this three percent of net terminal income and the three percent of net terminal income described in §29-22A-10b(a)(8)(B) of this code shall be distributed as provided in this paragraph as follows:

(i) 1.375 percent of the total amount of net terminal income described in this section and §29-22A-10b of this code shall be deposited into the Tourism Promotion Fund created pursuant to §5B-2-12 of this code;

(ii) 0.375 percent of the total amount of net terminal income described in this section and in §29-22A-10b of this code shall be deposited into the Development Office Promotion Fund created pursuant to §5B-2-3b of this code;

(iii) 0.5 percent of the total amount of net terminal income described in this section and in §29-22A-10b of this code shall be deposited into the Research Challenge Fund created pursuant to §18B-1B-10 of this code;

(iv) 0.6875 percent of the total amount of net terminal income described in this section and in §29-22A-10b of this code shall be deposited into the Capitol Renovation and Improvement Fund administered by the Department of Administration pursuant to §5A-4-6 of this code; and

(v) 0.0625 percent of the total amount of net terminal income described in this section and in §29-22A-10b of this code shall be deposited into the 2004 Capitol Complex Parking Garage Fund administered by the Department of Administration pursuant to §5A-4-5a of this code;

(9)(A) On and after July 1, 2005, seven percent of net terminal income shall be deposited into the Workers' Compensation Debt Reduction Fund created in §23-2d-5 of this code: *Provided*, That

in any fiscal year when the amount of money generated by this subdivision totals \$11 million, all subsequent distributions pursuant to this subdivision shall be deposited in the special fund established by the licensee and used for the payment of regular purses in addition to the other amounts provided in §19-23-1 *et seq.* of this code;

(B) The deposit of the seven percent of net terminal income into the Workers' Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to these funds and shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to the other amounts provided in §19-23-1 *et seq.* of this code on and after the first day of the month following the month in which the Governor certifies to the Legislature that: (i) The revenue bonds issued pursuant to §23-2D-1 *et seq.* of this code have been retired or payment of the debt service provided for; and (ii) that an independent certified actuary has determined that the unfunded liability of the old fund, as defined in chapter 23 of this code, has been paid or provided for in its entirety; and

(10) The remaining one percent of net terminal income shall be deposited as follows:

(A) For the fiscal year beginning July 1, 2003, the Veterans Memorial Program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia. The moneys shall be deposited in the State Treasury in the Division of Culture and History special fund created pursuant to §29-1I-3 of this code: *Provided*, That only after sufficient moneys have been deposited in the fund to complete the veterans memorial and to pay in full the annual bonded indebtedness on the veterans memorial, not more than \$20,000 of the one percent of net terminal income provided in this subdivision shall be deposited into a special revenue fund in the State Treasury, to be known as the John F. 'Jack' Bennett Fund. The moneys in this fund shall be expended by the Division of Veterans Affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The Division of Veterans Affairs

shall promulgate legislative rules pursuant to the provisions of §29-3-1 *et seq.* of this code specifying the manner in which the funds are spent, determine the ability of the surviving spouse to pay for the placement of the marker and setting forth the standards to be used to determine the priority in which the veterans' grave markers will be placed in the event that there are not sufficient funds to complete the placement of veterans' grave markers in any one year, or at all. Upon payment in full of the bonded indebtedness on the veterans memorial, \$100,000 of the one percent of net terminal income provided in this subdivision shall be deposited in the special fund in the Division of Culture and History created pursuant to §29-11-3 of this code and be expended by the Division of Culture and History to establish a West Virginia veterans memorial archives within the Cultural Center to serve as a repository for the documents and records pertaining to the veterans memorial, to restore and maintain the monuments and memorial on the capitol grounds: *Provided, however,* That \$500,000 of the one percent of net terminal income shall be deposited in the State Treasury in a special fund of the Department of Administration, created pursuant to §5A-4-5 of this code, to be used for construction and maintenance of a parking garage on the State Capitol Complex; and the remainder of the one percent of net terminal income shall be deposited in equal amounts in the Capitol Dome and Improvements Fund created pursuant to §5A-4-2 of this code and Cultural Facilities and Capitol Resources Matching Grant Program Fund created pursuant to §29-1-3 of this code.

(B) For each fiscal year beginning after June 30, 2004:

(i) Five hundred thousand dollars of the one percent of net terminal income shall be deposited in the State Treasury in a special fund of the Department of Administration, created pursuant to §5A-4-5 of this code, to be used for construction and maintenance of a parking garage on the State Capitol Complex; and

(ii) The remainder of the one percent of net terminal income and all of the one percent of net terminal income described in §29-22A-10b(a)(9)(B) of this code shall be distributed as follows: The net terminal income shall be deposited in equal amounts into the Capitol Dome and Capitol Improvements Fund created pursuant to

§5A-4-2 of this code and the Cultural Facilities and Capitol Resources Matching Grant Program Fund created pursuant to §29-1-3 of this code until a total of \$1,500,000 is deposited into the Cultural Facilities and Capitol Resources Matching Grant Program Fund; thereafter, the remainder shall be deposited into the Capitol Dome and Capitol Improvements Fund.

(d) Each licensed racetrack shall maintain in its account an amount equal to or greater than the gross terminal income from its operation of video lottery machines, to be electronically transferred by the commission on dates established by the commission. Upon a licensed racetrack's failure to maintain this balance, the commission may disable all of a licensed racetrack's video lottery terminals until full payment of all amounts due is made. Interest shall accrue on any unpaid balance at a rate consistent with the amount charged for state income tax delinquency pursuant to chapter 11 of this code. The interest shall begin to accrue on the date payment is due to the commission.

(e) The commission's central control computer shall keep accurate records of all income generated by each video lottery terminal. The commission shall prepare and mail to the licensed racetrack a statement reflecting the gross terminal income generated by the licensee's video lottery terminals. Each licensed racetrack shall report to the commission any discrepancies between the commission's statement and each terminal's mechanical and electronic meter readings. The licensed racetrack is solely responsible for resolving income discrepancies between actual money collected and the amount shown on the accounting meters or on the commission's billing statement.

(f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the commission may make no credit adjustments. For any video lottery terminal reflecting a discrepancy, the licensed racetrack shall submit to the commission the maintenance log which includes current mechanical meter readings and the audit ticket which contains electronic meter readings generated by the terminal's software. If the meter readings and the commission's records cannot be reconciled, final disposition of the matter shall be determined by the commission.

Any accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the commission.

(g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not operational or the commission notifies licensed racetracks that remittance by this method is required. The licensed racetracks shall report an amount equal to the total amount of cash inserted into each video lottery terminal operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminal in exchange for winning redemption tickets, and remit the amount as generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than noon on the day when the payment would otherwise be completed through electronic funds transfer.

(h) Licensed racetracks may, upon request, receive additional reports of play transactions for their respective video lottery terminals and other marketing information not considered confidential by the commission. The commission may charge a reasonable fee for the cost of producing and mailing any report other than the billing statements.

(i) The commission has the right to examine all accounts, bank accounts, financial statements, and records in a licensed racetrack's possession, under its control or in which it has an interest and the licensed racetrack shall authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.

(j) If a court of competent jurisdiction finds that the provisions of this section as amended and reenacted in 2021 and the provisions of §29-22A-10d of this code conflict and cannot be harmonized, the provisions of §29-22A-10d of this code shall control.

§29-22A-10b. Distribution of excess net terminal income.

(a) For all years beginning on or after July 1, 2001, any amount of net terminal income generated annually by a licensed racetrack

in excess of the amount of net terminal income generated by that licensed racetrack during the fiscal year ending on June 30, 2001, shall be divided as follows:

(1) The Commission shall receive forty-one percent of net terminal income, which the Commission shall deposit in the state Excess Lottery Revenue Fund created in §29-22-18a of this code;

(2) Until July 1, 2005, eight percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to other amounts provided in §19-23-1 *et seq.* of this code; on and after July 1, 2005, the rate shall be four percent of net terminal income;

(3) The county where the video lottery terminals are located shall receive two percent of the net terminal income: *Provided, That:*

(A) Any amount by which the total amount under this section and §29-22A-10(c)(3) of this code is in excess of the two percent received during fiscal year 1999 by a county in which a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1999, shall be divided as follows:

(i) The county shall receive 50 percent of the excess amount; and

(ii) The municipalities of the county shall receive 50 percent of the excess amount, the 50 percent to be divided among the municipalities on a per capita basis as determined by the most recent decennial United States census of population; and

(B) Any amount by which the total amount under this section and §29-22A-10(c)(3) of this code is in excess of the two percent received during fiscal year 1999 by a county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has been located in a municipality within the county since on or before January 1, 1999, shall be divided, if applicable, as follows:

(i) The county shall receive 50 percent of the excess amount; and

(ii) The municipality shall receive 50 percent of the excess amount; and

(C) In a county in which a racetrack other than a racetrack described in paragraphs (A) or (B) of this subdivision is located and where the racetrack has been located within that county since on or before January 1, 1999, and where the racetrack is not located in a municipality, the two percent of net terminal income shall be divided, if applicable, as follows:

(i) The county shall receive one percent; and

(ii) The remaining one percent shall be distributed in equal shares to all municipalities within the county. Per capita population has no effect on distributions under this paragraph;(4) One half of one percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the Racing Commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) The West Virginia Thoroughbred Development Fund created under §19-23-13b of this code and the West Virginia greyhound breeding development fund created under §19-23-10 of this code shall receive an equal share of a total of not less than one and one-half percent of the net terminal income.

(6) The West Virginia Racing Commission shall receive one percent of the net terminal income which shall be deposited and used as provided in §19-23-13c of this code;

(7) A licensee shall receive forty-two percent of net terminal income;

(8) The tourism promotion fund established in §5B-2-12 of this code shall receive three percent of the net terminal income: *Provided*, That for each fiscal year beginning after June 30, 2004, this three percent of net terminal income shall be distributed pursuant to the provisions of §29-22A-10(c)(8)(B) of this code;

(9) (A) On and after July 1, 2005, four percent of net terminal income shall be deposited into the Workers' Compensation Debt Reduction Fund created in §23-2D-5 of this code: *Provided*, That in any fiscal year when the amount of money generated by this subdivision together with the total allocation transferred by the operation of §29-22A-10(c)(9) of this code totals \$11 million, all subsequent distributions under this subdivision (9) during that fiscal year shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to other amounts provided in §19-23-1 *et seq.* of this code;

(B) The deposit of the four percent of net terminal income into the Worker's Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to these funds, which shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to the other amounts provided in §19-23-1 *et seq.* of this code on and after the first day of the month following the month in which the Governor certifies to the Legislature that: (i) The revenue bonds issued pursuant to §23-2D-1 *et seq.* of this code have been retired or payment of the debt service is provided for; and (ii) that an independent certified actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided in its entirety; and

(10) (A) One percent of the net terminal income shall be deposited in equal amounts in the capitol dome and improvements fund created under §5A-4-2 of this code and cultural facilities and capitol resources matching grant program fund created under §29-1-3 of this code; and

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for each fiscal year beginning after June 30, 2004, this one percent of net terminal income shall be distributed pursuant to the provisions of §29-22A-10(c)(9)(B)(ii) of this code.

(b) The Commission may establish orderly and effective procedures for the collection and distribution of funds under this section in accordance with the provisions of this section and §29-22A-10 of this code.

CHAPTER 223

(Com. Sub. for S. B. 538 - By Senators Helton and Fuller)

[Passed April 3, 2025; in effect from passage]
[Approved by the Governor on April 30, 2025.]

AN ACT to amend and reenact §31-18E-9 of the Code of West Virginia, 1931, as amended, relating to removing the sunset date on the provision granting the right of first refusal to land reuse agencies and municipal land banks for acquiring certain tax-delinquent properties that permits these entities to purchase qualifying tax-delinquent properties before they are offered at public auction; modifying criteria that allow land bank or land reuse agency to refuse to sell property to adjacent property owner; revising reporting requirements; and allowing Joint Committee on Government and Finance to subpoena land bank or land reuse agency for purposes of conducting audit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18E. CORPORATIONS.

§31-18E-9. Acquisition of property.

(a) *Title to be held in its name.* — A land reuse agency or municipal land bank shall hold in its own name all real property it acquires.

(b) *Tax exemption.* — (1) Except as set forth in subdivision (2) of this subsection, the real property of a land reuse agency or municipal land bank and its income and operations are exempt from property tax.

(2) Subdivision (1) of this subsection does not apply to real property of a land reuse agency or municipal land bank after the

fifth consecutive year in which the real property is continuously leased to a private third party. However, real property continues to be exempt from property taxes if it is leased to a nonprofit or governmental agency at substantially less than fair market value.

(c) *Methods of acquisition.* — A land reuse agency or municipal land bank may acquire real property or interests in real property by any means on terms and conditions and in a manner the land reuse agency considers proper: *Provided*, That a land reuse agency or municipal land bank may not acquire any interest in oil, gas, or minerals which have been severed from the realty.

(d) *Acquisitions from municipalities or counties.* — (1) A land reuse agency or municipal land bank may acquire real property by purchase contracts, lease purchase agreements, installment sales contracts, and land contracts and may accept transfers from municipalities or counties upon terms and conditions as agreed to by the land reuse agency or municipal land bank and the municipality or county.

(2) A municipality or county may transfer to a land reuse agency or municipal land bank real property and interests in real property of the municipality or county on terms and conditions and according to procedures determined by the municipality or county as long as the real property is located within the jurisdiction of the land reuse agency or municipal land bank.

(3) An urban renewal authority, as defined in §16-18-4 of this code, located within a land reuse jurisdiction established under this article may, with the consent of the local governing body and without a redevelopment contract, convey property to the land reuse agency. A conveyance under this subdivision shall be with fee simple title, free of all liens and encumbrances.

(e) *Maintenance.* — A land reuse agency or municipal land bank shall maintain all of its real property in accordance with the statutes and ordinances of the jurisdiction in which the real property is located.

(f) *Prohibition.* — (1) Subject to the provisions of subdivision (2) of this subsection, a land reuse agency or municipal land bank may not own or hold real property located outside the jurisdictional boundaries of the entities which created the land reuse agency under §31-18E-4(c) of this code.

(2) A land reuse agency or municipal land bank may be granted authority pursuant to an intergovernmental cooperation agreement with a municipality or county to manage and maintain real property located within the jurisdiction of the municipality or county.

(g) *Acquisition of tax-delinquent properties.* — (1) Notwithstanding any other provision of this code to the contrary, if authorized by the land reuse jurisdiction which created a land reuse agency or municipal land bank or otherwise by intergovernmental cooperation agreement, a land reuse agency or municipal land bank may acquire an interest in tax-delinquent property through the provisions of chapter 11A of this code. If any unredeemed tract or lot or undivided interest in real estate offered for sale at public auction remain unsold following the auction, the Auditor shall provide a list of all of said real estate within a land reuse or municipal land bank jurisdiction to the land reuse agency or municipal land bank and the land reuse agency or municipal land bank shall be given an opportunity to purchase the tax lien and pay the taxes, interest, and charges due for any unredeemed tract or lot or undivided interest therein as if the land reuse agency or municipal land bank purchased the tax lien at the tax sale.

(2) Notwithstanding any other provision of this code to the contrary, if authorized by the land reuse jurisdiction which created a land reuse agency or municipal land bank or otherwise by intergovernmental cooperation agreement, the land reuse agency or municipal land bank shall have the right of first refusal to purchase any tax-delinquent property which is within municipal limits, and meets one or more of the following criteria: (A) It has an assessed value of \$50,000 or less; (B) there are municipal liens on the property that exceed the amount of back taxes owed in the current tax cycle; (C) the property has been on the municipality's vacant property registry for 24 consecutive months or longer; (D) the property was sold at a tax sale within the previous three years, was

not redeemed, and no deed was secured by the previous lien purchaser; or (E) has been condemned: *Provided*, That the land reuse agency or municipal land bank satisfies the requirements of subdivision (3) of this subsection. A list of properties which meet the criteria of this subdivision shall regularly be compiled by the sheriff of the county, and a land reuse agency or municipal land bank may purchase any qualifying tax-delinquent property for an amount equal to the taxes owed and any related fees before such property is placed for public auction.

(3) When a land reuse agency or municipal land bank exercises a right of first refusal in accordance with subdivision (2) of this section, the land reuse agency or municipal land bank shall, within 15 days of obtaining a tax deed, provide written notice to all owners of real property that is adjacent to the tax-delinquent property. Any such property owner shall have a period of 120 days from the receipt of notice, actual or constructive, to express an interest in purchasing the tax-delinquent property from the land reuse agency or municipal land bank for an amount equal to the amount paid for the property plus expenses incurred by the land reuse agency or municipal land bank: *Provided*, That the land reuse agency or municipal land bank may refuse to sell the property to the adjacent property owner that expressed interest in the tax-delinquent property if that property owner or an entity owned by the property owner or its directors meets any of the criteria expressed in §11A-3-45 or §11A-3-48 of this code.

(4) As soon as possible after January 1 of each year, any land reuse agency or municipal land bank which exercises the authority granted by this subsection shall submit to the West Virginia Land Stewardship Corporation an annual report on the entity's activities related to the purchase of tax-delinquent properties and any benefits realized from the authority granted by this subsection. The West Virginia Land Stewardship Corporation shall then provide a compiled report to the Joint Committee on Government and Finance detailing those activities of the land reuse agencies and municipal land banks for the preceding calendar year. The Joint Committee on Government and Finance may conduct an audit of the activities reported and may subpoena any land reuse agency or municipal land bank for that purpose.

CHAPTER 224

(S. B. 615 - By Senators Smith (Mr. President) and Woelfel)
(By Request of the Executive)

[Passed April 7, 2025; in effect from passage]
[Approved by the Governor on April 24, 2025.]

AN ACT to amend and reenact §11-15-16, §11-15A-10, and §11-21-74 of the Code of West Virginia, 1931, as amended, relating to eliminating accelerated tax payment requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-16. Tax return and payment; exception; requiring a combined return.

(a) *Payment of tax.* — Subject to the exceptions set forth in subsection (g) of this section, the taxes levied by this article are due and payable in monthly installments, on or before the twentieth day of the month next succeeding the month in which the tax accrued, except as otherwise provided in this article.

(b) *Combined return required.* —

(1) The Tax Commissioner shall, no later than June 15, 2008, design a return that combines filing of the taxes levied by this article and §11-15A-1 *et seq.* of this code.

(2) Beginning July 1, 2008, each person required to file a return required by this article or §11-15A-1 *et seq.* of this code, or both this article and §11-15A-1 *et seq.* of this code, shall complete and file the return required by the Tax Commissioner.

(3) The Tax Commissioner may promulgate rules pursuant to §29A-3-1 *et seq.* of this code and otherwise use any combination of notices, forms and instructions he or she determines necessary to implement the use of the form required by subsection (c) of this section.

(c) *Tax return.* — The taxpayer shall, on or before the twentieth day of each month, make out and mail to the Tax Commissioner a return for the preceding month, in the form prescribed by the Tax Commissioner, showing:

(1) The total gross proceeds of the vendor's business for the preceding month;

(2) The gross proceeds of the vendor's business upon which the tax is based;

(3) The amount of the tax for which the vendor is liable; and

(4) Any further information necessary in the computation and collection of the tax which the Tax Commissioner may require, except as otherwise provided in this article or §11-15B-1 *et seq.* of this code.

(d) *Remittance to accompany return.* — Except as otherwise provided in this article or §11-15B-1 *et seq.* of this code, a remittance for the amount of the tax shall accompany the return.

(e) *Deposit of collected tax.* — Tax collected by the Tax Commissioner shall be deposited as provided in §11-15-30 of this code, except that:

(1) Tax collected on sales of gasoline and special fuel shall be deposited in the State Road Fund; and

(2) Any sales tax collected by the Alcohol Beverage Control Commissioner from persons or organizations licensed under authority of §60-7-1 *et seq.* of this code shall be paid into a revolving fund account in the State Treasury, designated the Drunk Driving Prevention Fund, to be administered by the Commission

on Drunk Driving Prevention, subject to appropriations by the Legislature.

(f) *Return to be signed.* — A return shall be signed by the taxpayer or the taxpayer's duly authorized agent, when a paper return is prepared and filed. When the return is filed electronically, the return shall include the digital mark or digital signature, as defined in §39A-3-1 *et seq.* of this code, or the personal identification number of the taxpayer, or the taxpayer's duly authorized agent, made in accordance with any procedural rule that may be promulgated by the Tax Commissioner.

(g) *Accelerated payment.* —

(1) Notwithstanding any other provision of this code to the contrary, after June 30, 2014, taxpayers whose average monthly payment of the taxes levied by this article and article fifteen-a of this chapter during the previous calendar year exceeds \$100,000, shall remit the tax attributable to the first fifteen days of June each year by June 20.

(2) For purposes of complying with subdivision (1) of this subsection, the taxpayer shall remit an amount equal to the amount of tax imposed by this article and §11-15A-1 *et seq.* of this code on actual taxable sales of tangible personal property and custom software and sales of taxable services during the first 15 days of June or, at the taxpayer's election, the taxpayer may remit an amount equal to 50 percent of the taxpayer's liability for tax under this article on taxable sales of tangible personal property and custom software and sales of taxable services made during the preceding month of May.

(3) For a business which has not been in existence for a full calendar year, the total tax due from the business during the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year; and if that amount exceeds \$100,000, the tax attributable to the first 15 days of June each year shall be remitted by June 20 as provided in subdivision (2) of this subsection.

(4) When a taxpayer required to make an advanced payment of tax under subdivision (1) of this subsection makes out its return for the month of June, which is due by July 20, the taxpayer may claim as a credit against liability under this article for tax on taxable transactions during the month of June the amount of the advanced payment of tax made under subdivision (1) of this subsection.

(h) Effective upon passage, the provisions of §11-15-16(g) of this code shall no longer have any force or effect.

ARTICLE 15A. USE TAX.

§11-15A-10. Payment to Tax Commissioner.

(a) Each retailer required or authorized, pursuant to §11-15A-6, §11-15A-6a, or §11-15A-7 of this code, or pursuant to §11-15B-1 *et seq.* of this code, to collect the tax imposed in §11-15A-2 of this code, is required to pay to the Tax Commissioner the amount of the tax on or before the twentieth day of the month next succeeding each calendar month, except as otherwise provided in this article or §11-15B-1 *et seq.* of this code.

(b) Each certified service provider for a Model I seller shall pay to the Tax Commissioner the tax levied by this article on or before the twentieth day of the month next succeeding the calendar month in which the tax accrued, except as otherwise provided in this article or §11-15B-1 *et seq.* of this code.

(c) At that time, each retailer, seller or certified service provider shall file with the Tax Commissioner a return for the preceding monthly period, except as otherwise provided in this article or §11-15B-1 *et seq.* of this code, in the form prescribed by the Tax Commissioner showing the sales price of any or all tangible personal property, custom software and taxable services sold by the retailer or seller during the preceding quarterly period, the use of which is subject to the tax imposed by this article, and any other information the Tax Commissioner may consider necessary for the proper administration of this article. The return shall be accompanied by a remittance of the amount of the tax, for the period covered by the return, except as otherwise provided in this

article or §11-15B-1 *et seq.* of this code: *Provided*, That where the tangible personal property or custom software is sold under a conditional sales contract, or under any other form of sale wherein the payment of the principal sum, or a part of the sum is extended over a period longer than sixty days from the date of the sale, the retailer may collect and remit each monthly period that portion of the tax equal to six percent of that portion of the purchase price actually received during the monthly period.

(d) The Tax Commissioner may, upon request and a proper showing of the necessity to do so, grant an extension of time not to exceed 30 days for making any return and payment.

(e) Returns shall be signed by the retailer or seller or his or her duly authorized agent, and must be certified by him or her to be correct, except as otherwise provided in this article or §11-15B-1 *et seq.* of this code.

(f) *Accelerated payment.* —

(1) For calendar years beginning after December 31, 2002, taxpayers whose average monthly payment of the taxes levied by this article and §11-15-1 *et seq.* of this code during the previous calendar year exceeds \$100,000, shall remit the tax attributable to the first 15 days of June each year on or before June 20 of said month.

(2) For purposes of complying with subdivision (1) of this subsection, the taxpayer shall remit an amount equal to the amount of tax imposed by this article and §11-15-1 *et seq.* of this code on actual taxable sales of tangible personal property and custom software and sales of taxable services during the first 15 days of June or, at the taxpayer's election, taxpayer may remit an amount equal to 50 percent of taxpayer's liability for tax under this article on taxable sales of tangible personal property and custom software and sales of taxable services made during the preceding month of May.

(3) For a business which has not been in existence for a full calendar year, the total tax due from the business during the prior

calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year; and if that amount exceeds \$100,000, the tax attributable to the first 15 days of June each year shall be remitted on or before June 20 of said month as provided in subdivision (2) of this subsection.

(4) When a taxpayer required to make an advanced payment of tax under subdivision (1) of this subsection makes out its return for the month of June, which is due on July 20, the taxpayer may claim as a credit against its liability under this article for tax on taxable transactions during the month of June, the amount of the advanced payment of tax made under subdivision (1) of this subsection.

(g) Effective upon passage, the provisions of §11-15A-10(f) of this code shall no longer have any force or effect.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-74. Filing of employer's withholding return and payment of withheld taxes; annual reconciliation; e-filing required for certain tax preparers and employer.

(a) *General.* — Every employer required to deduct and withhold tax under this article shall file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and withheld. The due dates for returns and payments shall be established by the Tax Commissioner to match as closely as practicable the due dates in effect for federal income tax purposes, in accordance with the procedures established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue Code except as otherwise provided in this section: *Provided*, That not later than January 31, 2019, and January 31 of each year thereafter, employers and payers shall submit to the Tax Commissioner the annual reconciliation of West Virginia income tax withheld, together with state copies of all withholding tax statements reflecting West Virginia tax withholding, including, but not limited to, forms W-2, W-2G, and 1099, furnished to each employee or payee for the preceding calendar year, notwithstanding the fact that the employer or payer may have a calendar tax year ending on December 31 or a fiscal

tax year ending on a date other than December 31. Notwithstanding the provisions of this section, where the average quarterly amount deducted and withheld by any employer is less than \$150 and the aggregate for the calendar year can reasonably be expected to be less than \$600, the Tax Commissioner may by rule permit an employer to file an annual return and pay over to the Tax Commissioner the taxes deducted and withheld on or before the last day of the month following the close of the calendar year.

(b) *Annual returns and payments of withheld tax of certain domestic and household employees.* — Employers of domestic and household employees whose withholdings of federal income tax are annually paid and reported by the employer pursuant to the filing of Schedule H of federal form 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS, or 1041 shall, on or before January 31 next succeeding the end of the calendar year for which withholdings are deducted and withheld, file an annual withholding return with the Tax Commissioner, and annually remit to the Tax Commissioner, West Virginia personal income taxes deducted and withheld for the employees together with state copies of all withholding tax statements reflecting West Virginia tax withholding, including, but not limited to, forms W-2, W-2G, and 1099, furnished to each employee or payee for the preceding calendar year, notwithstanding the fact that the employer or payer may have a calendar tax year ending on December 31 or a fiscal tax year ending on a date other than December 31. The Tax Commissioner may promulgate legislative or other rules pursuant to §29A-3-1 *et seq.* of this code for implementation of this subsection.

(c) *Deposit in trust for Tax Commissioner.* — Whenever any employer fails to collect, truthfully account for, or pay over the tax, or to make returns of the tax as required in this section, the Tax Commissioner may serve a notice requiring the employer to collect the taxes which become collectible after service of the notice, to deposit the taxes in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner and to keep the amount of the tax in the separate account until payment over to the Tax Commissioner. The notice remains in effect until a notice of cancellation is served by the Tax Commissioner.

(d) *Accelerated payment.* —

(1) Every employer required to deduct and withhold tax whose average payment per calendar month for the preceding calendar year under §11-21-74(a) of this code exceeded \$100,000 shall remit the tax attributable to the first 15 days of June each year by June 23.

(2) For purposes of complying with §11-21-74(d)(1) of this code, the employer shall remit an amount equal to the withholding tax due under this article on employee compensation subject to withholding tax payable or paid to employees for the first 15 days of June or, at the employer's election, the employer may remit an amount equal to 50 percent of the employer's liability for withholding tax under this article on compensation payable or paid to employees for the preceding month of May.

(3) For an employer which has not been in business for a full calendar year, the total amount the employer was required to deduct and withhold under §11-21-74(a) of this code for the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year and if that amount exceeds \$100,000, the employer shall remit the tax attributable to the first 15 days of June each year by June 23, as provided in §11-21-74(d)(2) of this code.

(4) When an employer required to make an advanced payment of withholding tax under §11-21-74(d)(1) of this code makes out its return for the month of June, which is due by July 20, that employer may claim as a credit against its liability under this article for tax on employee compensation paid or payable for employee services rendered during the month of June the amount of the advanced payment of tax made under §11-21-74(d)(1) of this code.

(e) Effective upon passage, the provisions of §11-21-74(d) of this code shall no longer have any force or effect.

(f) An annual reconciliation of West Virginia personal income tax withheld shall be submitted by the employer by January 31, following the close of the calendar year, together with Tax Division copies of all withholding tax statements for that preceding calendar year. The reconciliation shall be accompanied by a list of the

amounts of income withheld for each employee in such form as the Tax Commissioner prescribes and shall be filed separately from the employer's monthly or quarterly return.

(g) Any employer required to file a withholding return for 50 or more employees shall file its return using electronic filing as defined in §11-21-54 of this code: *Provided*, That for any tax period beginning after December 31, 2017, any employer that uses a payroll service or is required to file a withholding return for 25 or more employees shall file its return using electronic filing as defined in §11-21-54 of this code. An employer that is required to file electronically but does not do so is subject to a penalty in the amount of \$25 per employee for whom the return was not filed electronically, unless the employer shows that the failure is due to a technical inability to comply.

CHAPTER 225

(S. B. 876 - By Senator Rucker)

[Passed April 10, 2025; in effect 90 days from passage (July 9, 2025)]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding a new section, designated §11-10-28, relating to terminating certain requirements for the Tax Commissioner to submit reports, publish information, and provide notice; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-28. Efficiency in Tax Division reporting.

(a) The Legislature recognizes that certain statutory requirements for legislative reports have become redundant, inefficient, and no longer serve the purpose for which they were originally intended; the continuing requirement for numerous legislative reports imposes unnecessary burdens on both state agencies and legislative bodies, diverting valuable resources away from core functions; many of these reports are rarely used by lawmakers in the legislative process, fail to result in actionable policy changes, and contribute to the growing backlog of unreviewed and underutilized documents; the requirement to produce these reports has proven to be a wasteful expenditure of time, taxpayer funds, and personnel, without producing a tangible benefit to the legislative decision-making process or the public; and the Legislature has a responsibility to ensure that state government operates in the most effective, efficient, and transparent manner possible, and should focus on legislative activities and reports that

directly support policymaking and serve the public interest. Therefore, the Legislature finds that the repeal of certain code sections related to unnecessary legislative reports will reduce administrative burdens, improve the allocation of state resources, and increase the efficiency of legislative functions, ultimately promoting a more streamlined and responsive government.

(b) Requirements in the following sections of this code for the Tax Commissioner to submit reports, publish information, or provide notice shall not apply for any period on or after January 1, 2025:

(1) The report on certified capital additions provided for in §11-6F-4;

(2) The report of the Criminal Investigation Division pursuant to §11-9-2a;

(3) The reports relating to certain confidential taxpayer information provided for in §11-10-5s(b);

(4) The report relating to the automated tax administration system pursuant to §11-10C-4;

(5) The report related to the Business Investment and Jobs Expansion Tax Credit provided for in §11-13C-7a;

(6) The Economic Opportunity Tax Credit Review and Accountability report required by §11-13Q-20;

(7) The Manufacturing Investment Tax Credit Review and Accountability report required by §11-13S-10;

(8) The High Growth Business Investment Tax Credit Review and Accountability report required by §11-13U-8;

(9) The Manufacturing Property Tax Adjustment Credit report required by §11-13Y-8;

(10) The Commercial Patent Incentives Tax Credit Review and Accountability report required by §11-13AA-9;

(11) The Mine Safety Technology Tax Credit Review and Accountability report required by §11-13BB-11;

(12) The Farm to Food Bank Tax Credit report required by §11-13DD-6;

(13) The Coal Severance Tax Rebate report required by §11-13EE-13;

(14) The Tax Credit for Donation or Sale of a Vehicle Tax Credit Review report required by §11-13FF-6;

(15) The Natural Gas Manufacturing Investment Tax Credit Review and Accountability report required by §11-13GG-15;

(16) The West Virginia Natural Gas Liquids Property Tax Adjustment Tax Credit report required by §11-13HH-8;

(17) The West Virginia Volunteer Firefighter Tax Credit Review report required by §11-13JJ-6;

(18) The West Virginia Tax Credit for Federal Excise Tax Credit Review and Accountability report required by §11-13KK-12; and

(19) The West Virginia Property Tax Adjustment Act Annual report required by §11-13MM-7;

(c) Nothing in this section shall prohibit the Tax Commissioner from providing information and reporting as a part of the biennial report required to be filed by §11-1-4, the tax expenditure reports required to be filed under §11-10-5s, or otherwise as is deemed useful or necessary.

CHAPTER 226

**(H. B. 2024 - By Delegates Hanshaw (Mr. Speaker) and
Hornbuckle)**

(By Request of the Executive)

[Passed February 17, 2025; in effect from passage.]
[Approved by the Governor on February 24, 2025.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2023, but prior to January 1, 2025, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 1, 2025, may be given any effect.

(b) Medical savings accounts. — The term "taxable trust" does not include a medical savings account established pursuant to §33-15-20 or §33-16-15 of this code. Employer contributions to a medical savings account established pursuant to said sections are not wages for purposes of withholding under §11-21-71 of this code.

(c) Surtax. — The term "surtax" means the 20 percent additional tax imposed on taxable withdrawals from a medical savings account under §33-15-20 of this code and the 20 percent additional tax imposed on taxable withdrawals from a medical savings account under §33-16-15 of this code which are collected by the Tax Commissioner as tax collected under this article.

(d) Effective date. — The amendments to this section enacted in the year 2025 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2025, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

(e) For purposes of the refundable credit allowed to a low-income senior citizen for property tax paid on his or her homestead in this state, the term "laws of the United States" as used in subsection (a) of this section means and includes the term "low income" as defined in §11-21-21(b) of this code and as reflected in the poverty guidelines updated periodically in the federal register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. §9902(2).

(f) For taxable years beginning on and after January 1, 2018, whenever this article refers to "each exemption for which he or she is entitled to a deduction for the taxable year for federal income tax purposes", this phrase means the exemption the person would have been allowed to claim for the taxable year had the federal income tax law not been amended to eliminate the personal exemption for federal tax years beginning on or after January 1, 2018.



CHAPTER 227

**(H. B. 2025 - By Delegates Hanshaw (Mr. Speaker) and
Hornbuckle)**

(By Request of the Executive)

[Passed February 17, 2025; In effect from passage]
[Approved by the Governor on February 26, 2025.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to bringing terms not defined in the Corporation Net Income Tax Act into conformity with the meaning of those terms for federal income tax purposes; 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.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2023, but prior to January 1, 2025, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the

laws of the United States made on or after January 1, 2025, shall be given any effect.

(b) The term "Internal Revenue Code of 1986" means the Internal Revenue Code of the United States enacted by the federal Tax Reform Act of 1986 and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the federal Tax Reform Act of 1986 was enacted that were not amended or repealed by the federal Tax Reform Act of 1986. Except when inappropriate, any reference in any law, executive order, or other document:

(1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section enacted in the year 2025 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2025, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

CHAPTER 228

(Com. Sub. for H. B. 2399 - By Delegates Hillenbrand, Horst, Masters, Ward, Mazzocchi, Cooper, and Kimble)

[Passed April 7, 2025; in effect 90 days from passage (July 6, 2025)]

[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §11-1C-10 and §11-1C-11 of the Code of West Virginia, 1931, as amended, relating to changing frequency of landowner managed timberland certifications required to be made to the Division of Forestry to every five years; and specifying rulemaking authority for the State Tax Commissioner and the Division of Forestry.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-10. Valuation of industrial property and natural resources property by Tax Commissioner; managed timberland; rulemaking authority; penalties; methods; values sent to assessors.

(a) As used in this section:

"Industrial property" means real and personal property integrated as a functioning unit intended for the assembling, processing and manufacturing of finished or partially finished products.

"Natural resources property" means coal, oil, natural gas, limestone, fireclay, dolomite, sandstone, shale, sand and gravel, salt, lead, zinc, manganese, iron ore, radioactive minerals, oil shale,

managed timberland as defined in section two of this article, and other minerals.

(b) All owners of industrial property and natural resources property each year shall make a return to the State Tax Commissioner and, if requested in writing by the assessor of the county where situated, to such county assessor at a time and in the form specified by the commissioner of all industrial or natural resources property owned by them. The commissioner may require any information to be filed which would be useful in valuing the property covered in the return. Any penalties provided for in this chapter or elsewhere in this code relating to failure to list any property or to file any return or report may be applied to any owner of property required to make a return pursuant to this section.

(c) The State Tax Commissioner shall value all industrial property in the state at its fair market value within three years of the approval date of the plan for industrial property required in subsection (e) of this section. The commissioner shall thereafter maintain accurate values for all such property. The Tax Commissioner shall forward each industrial property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by 60 percent and include the resulting assessed value in the land book or the personal property book, as appropriate for each tax year. The commissioner shall supply support data that the assessor might need to evaluate the appraisal.

(d) Within three years of the approval date of the plan required for natural resources property required pursuant to subsection (e) of this section, the State Tax Commissioner shall determine the fair market value of all natural resources property in the state and thereafter maintain accurate values for all such property.

(1) In order to qualify for identification as managed timberland for property tax purposes the owner must certify every five years, in writing to the Division of Forestry, that the property meets the definition of managed timberland as set forth in this article and contracts to manage property according to a plan that will maintain the property as managed timberland. In addition, each owner's

certification must state that forest management practices will be conducted in accordance with approved practices from the publication "Best Management Practices for Forestry". Property certified as managed timberland shall be valued according to its use and productive potential. The Tax Commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1, *et seq.* of this code to administer the valuation and classification of managed timberland for purposes of taxation.

(2) In the case of all other natural resources property, the commissioner shall develop an inventory on a county by county basis of all such property and may use any resources, including, but not limited to, geological survey information; exploratory, drilling, mining and other information supplied by natural resources property owners; and maps and other information on file with the state Department of Environmental Protection and office of miners' health, safety and training. Any information supplied by natural resources owners or any proprietary or otherwise privileged information supplied by the state Department of Environmental Protection and office of miner's health, safety and training shall be kept confidential unless needed to defend an appraisal challenged by a natural resources owner. Formulas for natural resources valuation may contain differing variables based upon known geological or other common factors. The Tax Commissioner shall forward each natural resources property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate, for each tax year. The commissioner shall supply support data that the assessor might need to explain or defend the appraisal. The commissioner shall directly defend any challenged appraisal when the assessed value of the property in question exceeds \$2 million or an owner challenging an appraisal holds or controls property situated in the same county with an assessed value exceeding \$2 million. At least every five years, the commissioner shall review current technology for the recovery of natural resources property to determine if valuation methodologies need to be adjusted to reflect changes in value which result from development of new recovery technologies.

(3) Property producing oil, natural gas, natural gas liquids.

(A) The Tax Commissioner shall value property producing oil, natural gas, natural gas liquids, or any combination thereof in the state at its fair market value determined through the process of applying a yield capitalization model to the net proceeds.

(B) For the purposes of this subdivision:

(i) "Actual annual operating costs" shall include, without limitation, all lease operating expenses, lifting costs, gathering, compression, processing, separation, fractionation, and transportation costs as further defined herein.

(ii) "Capitalization rate" means a single state-wide capitalization rate for oil, natural gas, and natural gas liquids producing property, which shall be determined annually by the Tax Division based on a "Build-up-Model" of the Weighted Average Cost of Capital (WACC).

(iii) "Compression costs" are the actual costs in the process of raising the pressure of minerals.

(iv) "Fractionation costs" means the actual costs incurred by the producer in fractionation. Fractionation is the separating of components of a mixture through differences in physical or chemical properties. Fractionation is the process by which raw hydrocarbons are separated into products.

(v) "Gathering costs" means the actual costs of transportation of oil, natural gas, natural gas liquids, condensate, or any combination thereof from multiple wells by separate and individual pipelines to a central point of accumulation, dehydration, compression, separation, heating and treating or storage.

(vi) "Lease operating expenses" means the actual costs incurred to bring the subsurface minerals (oil, natural gas, and natural gas liquids) up to the surface and convert them to marketable products. Lease operating expenses refers to the costs of operating the wells and equipment. "Lease operating expenses" includes actual costs of labor, fuel, utilities, materials, rent or supplies, which are

directly related to the production, processing, or transportation of oil, natural gas, natural gas liquids, or any combination thereof and that can be documented by the producer. For the purposes of this calculation, depreciation, depletion, extraordinary expenses, ad valorem taxes, capital expenditures, intangible drilling costs, expenditures relating to vehicles or other tangible personal property not permanently used in the production of oil, natural gas, natural gas liquids, or any combination thereof shall not be included as lease operating expenses.

(vii) "Lifting costs" means the actual costs incurred to operate a well during production.

(viii) "Marginal well" means in the calendar year immediately preceding the July 1 assessment date a well with an average daily production of 2 barrels of oil or less and an average daily production of 10 MCF or less of natural gas.

(ix) "Natural gas liquids" means propane, ethane, butanes, and pentanes (also referred to as condensate), or a combination of them that are subject to recovery from raw gas liquids by processing in field separators, scrubbers, gas processing and reprocessing plants, or cycling plants.

(x) "Net proceeds" means actual gross receipts on a sales volume basis determined from the actual price received by the taxpayers as reported on the taxpayer's returns, less royalty interest receipts, and less actual annual operating costs as reported on the taxpayer's returns.

(xi) "Processing costs" means the actual costs incurred by the producer for activities occurring beyond the inlet to an oil, natural gas, or natural gas liquids processing facility that changes the physical or chemical characteristics, enhances the marketability, or enhances the value of the separate components. Processing costs are limited to the costs for the following activities: fractionation, adsorption, flashing, refrigeration, cryogenics, sweetening, dehydration within a processing facility, beneficiation, stabilizing, compression, and separation which occurs within a processing facility.

(xii) "Processing, Separation, and Fractionation costs" means de-ethnization fees, processing or fractionation fees, pipeline or transportation fees, fuel fees, and electric fees charged by a processing or fractionation plant to the producer.

(xiii) "Royalty interest receipts" means the fractional interest in production of oil, natural gas, natural gas liquids, or any combination thereof, that may or may not be subject to development costs or operating expenses and extends undiminished over the life of the property. Typically, it is retained by the mineral owner, mineral lessor, or both.

(xiv) "Transportation costs" means the actual costs of moving oil, natural gas, natural gas liquids, unprocessed gas, residue gas, or gas plant products or any combination thereof to a point of sale.

(C) (i) For all assessments made on or after July 1, 2022, the valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof shall be calculated using a yield capitalization model. The yield capitalization model shall be composed of a working interest model and a royalty interest model. The summation of the working interest model and the royalty interest model shall represent the fair market value of the property.

(I) The working interest model shall be calculated as the sum of the working interest net proceeds income series for natural gas, oil, and natural gas liquids. The net proceeds income series shall be calculated as a terminating series of net proceeds discounted by applying a capitalization rate multiplier and a decline rate multiplier. The initial term of the terminating series of net proceeds shall be the net proceeds for that product multiplied by a six month capitalization rate multiplier and an eighteen month decline rate multiplier.

In each subsequent term of the net proceeds income series, the calculation shall use the value from the previous term and multiply that term by a capitalization rate multiplier and an applicable twelve-month decline rate multiplier.

(II) The royalty interest model shall be calculated as the sum of the royalty interest receipts income series for natural gas, oil, and natural gas liquids. The royalty interest receipts income series shall be calculated as a terminating series of royalty interest receipts discounted by applying a capitalization rate multiplier and a decline rate multiplier. The initial term of the terminating series of royalty interest receipts shall be the royalty interest receipts for that product multiplied by a six month capitalization rate multiplier and an 18 month decline rate multiplier.

In each subsequent term of the royalty interest receipts income series, the calculation shall use the value from the previous term and multiply that term by a capitalization rate multiplier and an applicable 12-month decline rate multiplier.

(ii) For all assessments made on or after July 1, 2022, the Tax Commissioner shall annualize gross receipts and actual annual operating expenses before calculation of the working interest model and the royalty interest model for wells that produced for less than 12 months during the first calendar year of production or during the first calendar year of production after being shut-in during the previous calendar year. Companies may provide additional actual gross receipts and actual operating expense information that will be supplemented or used in lieu of the Tax Commissioner annualization calculations.

(iii) For all assessments made on or after July 1, 2024, but not before, the Tax Commissioner may not include a minimum valuation for any calculation related to determining the value of any well. For all assessments made prior to July 1, 2024, no minimum valuation shall exceed the values of \$0.30 per MCF of natural gas, \$10.00 per barrel of oil, or \$0.30 per unit of natural gas liquids, as established in a Notice to taxpayers from the State Tax Division dated on or about December 22, 2021.

(D) *Safe harbor.* – The Tax Commissioner shall annually determine a safe harbor amount for actual annual operating costs to be published in the State Register for all marginal wells producing oil, natural gas, natural gas liquids, or any combination thereof. For operators of marginal wells choosing to use the safe

harbor amount rather than calculate their actual annual operating costs, that safe harbor amount will be considered the costs associated with the production of the oil, natural gas, natural gas liquids, or any combination thereof, typical of the producing geographical area and geological strata.

(E) The Tax Commissioner shall collect, retain, and report to the Speaker of the House of Delegates and the President of the Senate on or before April 1, 2023, and each April 1 thereafter, all information requested by the Division of Regulatory and Fiscal Affairs regarding the valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof.

(F) The Tax Commissioner shall propose rules required to administer this subdivision, including emergency rules, in accordance with §29A-3-1 *et seq.* of this code, regarding valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof.

(e) The Tax Commissioner shall develop a plan for the valuation of industrial property and a plan for the valuation of natural resources property. The plans shall include expected costs and reimbursements, and shall be submitted to the property valuation training and procedures commission on or before January 1, 1991, for its approval on or before July 1, of such year. Such plan shall be revised, resubmitted to the commission and approved every three years thereafter.

(f) To perform the valuation duties under this section, the State Tax Commissioner has the authority to contract with a competent property appraisal firm or firms to assist with or to conduct the valuation process as to any discernible species of property statewide if the contract and the entity performing such contract is specifically included in a plan required by subsection (e) of this section or otherwise approved by the commission. If the Tax Commissioner desires to contract for valuation services only in one county or a group of counties, the contract must be approved by the commission.

(g) The county assessor may accept the appraisal provided, pursuant to this section, by the State Tax Commissioner: *Provided*, That if the county assessor fails to accept the appraisal provided by the State Tax Commissioner, the county assessor shall show just cause to the valuation commission for the failure to accept such appraisal and shall further provide to the valuation commission a plan by which a different appraisal will be conducted.

(h) The costs of appraising the industrial and natural resources property within each county, and any costs of defending same shall be paid by the state: *Provided*, That the office of the state Attorney General shall provide legal representation on behalf of the Tax Commissioner or assessor, at no cost, in the event the industrial and natural resources appraisal is challenged in court.

(i) For purposes of revaluing managed timberland as defined in section two of this article, any increase or decrease in valuation by the commissioner does not become effective prior to July 1, 1991. The property owner may request a hearing by the director of the Division of Forestry, who may thereafter rescind the disqualification or allow the property owner a reasonable period of time in which to qualify the property. A property owner may appeal a disqualification to the circuit court of the county in which the property is located.

§11-1C-11. Managed timberland; findings, purposes and declaration of legislative intent; implementation; inspection and determination of qualification; creation of online application renewal form; rulemaking authority.

(a) The Legislature finds and declares that the public welfare is enhanced by encouraging and sustaining the abundance of high quality forest land within the state; that economic pressures may force industrial, residential or other land development inconsistent with sustaining the forests; and that tax policy should provide an incentive for private owners of forest land to preserve the character and use of land as forest land and to make management decisions which enhance the quality of the future forest.

(b) In exercising the authority granted by the provisions of section fifty-three, article VI of the Constitution of West Virginia, the Legislature makes the following declarations of its intent:

(1) Notwithstanding the provisions of section twenty-four, article three of this chapter, timberland certified by the Division of Forestry as managed timberland shall be valued as managed timberland as provided in this article when it is managed under a cooperative contract with the Division of Forestry and the certification has not been surrendered by the owner of the property or revoked by the director of the Division of Forestry.

The Division of Forestry shall, at the time of contracting, notify the owner that the owner shall incur a penalty as set forth in §11-3-5a of this code if the owner fails to provide written notice to the county assessor of a change in use of the managed timberland.

(2) Property certified as managed timberland which prior to certification is properly taxed in Class II, as defined in §11-8-5a of this code and section one, article X of the Constitution of West Virginia, may not be reclassified to Class III or Class IV, as defined in §11-8-5 of this code, merely because the property is certified as managed timberland unless there is some other event or change in the use of the property that disqualifies it from being taxed in Class II.

(c) To aid the Legislature in assessing the impact of the managed timberland program on the State of West Virginia, the Division of Forestry and the Tax Commissioner, on or before December 31, 2001, and on December 31, each year thereafter, shall report in writing to the Joint Committee on Government and Finance of the Legislature or its designated subcommittee. The Tax Commissioner shall include in his or her report a complete and accurate assessment of the impact of the managed timberland program on the tax collections of the state, including projected increases or decreases in tax collection. The Division of Forestry shall include in its report detailed information on the number of acres designated as managed timberland and any identified impacts of the program on the state's timber industry.

(d) In order to expedite the renewal process for the Managed Timberland Program, the Division of Forestry shall create and maintain an online renewal process no later than October 1, 2023. The first question on the online renewal form shall read "Has your information from last submission changed?" If the answer is no, then the individual using the online renewal form shall have to check a box and submit the form, and that shall be a completed renewal application. If an individual's information has changed, then the individual shall have a space on the online form to complete that summarizes those changes. There shall be no charge to the individual for any submission of an online renewal form. This section does not affect the costs associated with the initial application.

(e) The Division of Forestry shall propose rules for legislative approval in accordance with the provisions of §29A-3-1, *et seq.* of this code to administer the designation and certification of forest land managed under a cooperative contract with the Division of Forestry, and valued as managed timberland for State tax purposes.

CHAPTER 229

**(H. B. 2344 - By Delegates J. Cannon, Chiarelli, Holstein,
Browning, and Eldridge)**

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §17C-14-9a of the Code of West Virginia, 1931, as amended, relating to requiring drivers take certain actions when approaching stationary vehicles that display a warning signal; providing for fine, confinement, and suspension of driving privileges

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-9a. Approaching stationary vehicles; penalties.

(a) The driver of any vehicle approaching a stationary vehicle, when the stationary vehicle is giving a signal by displaying alternately flashing red, red and white, blue, or red and blue lights or amber or yellow warning lights, emergency flashers or hazard lights, flares, or retroreflective warning sign shall:

(1) Proceed with due caution, yield the right-of-way by making a lane change not adjacent to that of the stationary vehicle, if possible with regard to safety and traffic conditions, if on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the approaching vehicle and reduce speed to a safe level for road conditions; or

(2) Proceed with due caution, reduce the speed of the vehicle, maintaining a safe speed not to exceed 15 miles per hour on any nondivided highway or street and 25 miles per hour on any divided

highway depending on road conditions, if changing lanes would be impossible or unsafe.

(b) (1) Any person who violates any subsection of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in the county or regional jail not more than 60 days, or both fined and confined.

(2) If violation of this section results in property damage in addition to any other penalty imposed, driving privileges of the persons causing the property damage shall be suspended for 90 days.

(3) If violation of this section results in injury to another person in addition to any other penalty imposed, the driving privileges of the person causing the injury shall be suspended for six months.

(4) If violation of this section results in the death of another person in addition to any other penalty imposed, the driving privileges of the person causing the death shall be suspended for two years.

(5) Any person who violates any provision of this section and while doing so also violates §17C-5-2 of this code is guilty of a misdemeanor and, upon conviction thereof, shall, in addition to the penalties set out in §17C-5-2 of this code and this section, be fined not less than \$1,000 nor more than \$5,000, or confined in jail for a period not more than six months, or both fined and confined.

CHAPTER 230

(Com. Sub. for H. B. 2347 - By Delegates Worrell, Hite, Heckert, Chiarelli, Miller, Petitto, Hamilton, and Pushkin)

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]

[Approved by the Governor on April 30, 2025.]

AN ACT to amend and reenact §27-5-2 and §27- 5-4 of the Code of West Virginia, 1931, as amended, relating to involuntary custody and involuntary hospitalization; providing additional grounds for application for involuntary hospitalization; modifying evidentiary standards for imposing civil liability on mental health professionals rendering services in mental hygiene cases; requiring individual to agree to voluntary treatment before being removed from involuntary hospitalization prior to probable cause hearing; providing additional grounds for satisfaction of probable cause and involuntary hospitalization standards in mental hygiene proceedings; providing name of amendments; permitting hospitalization of individuals with substance use disorder under certain circumstances; providing prohibition on consideration of refusal of substance abuse services when considering individual's judgment; providing for dismissal of involuntary hospitalization proceedings under certain circumstances; setting forth additional required findings by the chief medical officer; providing for restoration of firearm possession rights under certain circumstances; and providing for removal of individual from mental health registry under certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

(a) Any adult person may make an application for involuntary hospitalization for examination of an individual when the person making the application has reason to believe that the individual to be examined has a substance use disorder as defined by the most recent edition of the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, inclusive of substance use withdrawal, or is mentally ill and because of his or her substance use disorder or mental illness, the individual is likely to cause serious harm to himself, herself, or to others if allowed to remain at liberty while awaiting an examination and certification by a physician, psychologist, licensed professional counselor, licensed independent social worker, an advanced nurse practitioner, or physician assistant as provided in subsection (e) of this section: *Provided*, That a diagnosis of dementia, epilepsy, or intellectual or developmental disability alone may not be a basis for involuntary commitment to a state hospital: *Provided, however*, That an application for involuntary hospitalization may be made where the person making the application has reason to believe the individual to be examined has a substance use disorder, has lost the power of self-control with respect to substance use, is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that the individual is incapable of appreciating his or her need for such services and is further incapable of making a rational decision in regard thereto: *Provided further*, That an individual's mere refusal to receive substance abuse services does not constitute evidence of lack of judgment with respect to his or her need for substance abuse services.

(b) Notwithstanding any language in this subsection to the contrary, if the individual to be examined under the provisions of this section is incarcerated in a jail, prison, or other correctional facility, then only the chief administrative officer of the facility holding the individual may file the application, and the application must include the additional statement that the correctional facility

itself cannot reasonably provide treatment and other services necessary to treat the individual's mental illness or substance use.

(c) Application for involuntary custody for examination may be made to the circuit court, magistrate court, or a mental hygiene commissioner of the county in which the individual resides, or of the county in which he or she may be found. A magistrate before whom an application or matter is pending may, upon the availability of a mental hygiene commissioner or circuit court judge for immediate presentation of an application or pending matter, transfer the pending matter or application to the mental hygiene commissioner or circuit court judge for further proceedings unless otherwise ordered by the chief judge of the judicial circuit.

(d) The person making the application shall give information and state facts in the application required by the form provided for this purpose by the Supreme Court of Appeals.

(e) (1) The circuit court, mental hygiene commissioner, or magistrate may enter an order for the individual named in the application to be detained and taken into custody as provided in §27-5-1 and §27-5-10 of this code for the purpose of holding a probable cause hearing as provided in §27-5-2 of this code. An examination of the individual to determine whether the individual meets involuntary hospitalization criteria shall be conducted in person unless an in person examination would create a substantial delay in the resolution of the matter in which case the examination may be by video conference, and shall be performed by a physician, psychologist, a licensed professional counselor practicing in compliance with §30-31-1 *et seq.* of this code, a licensed independent clinical social worker practicing in compliance with §30-30-1 *et seq.* of this code, an advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this code, a physician assistant practicing in compliance with §30-3-1 *et seq.* of this code, or a physician assistant practicing in compliance with §30-3E-1 *et seq.* of this code: *Provided*, That a licensed professional counselor, a licensed independent clinical social worker, a physician assistant, or an advanced nurse practitioner with psychiatric certification may only

perform the examination if he or she has previously been authorized by an order of the circuit court to do so, the order having found that the licensed professional counselor, the licensed independent clinical social worker, physician assistant, or advanced nurse practitioner with psychiatric certification has particularized expertise in the areas of mental health and mental hygiene or substance use disorder sufficient to make the determinations required by the provisions of this section. The examination shall be provided or arranged by a community mental health center designated by the Secretary of the Department of Human Services to serve the county in which the action takes place. The order is to specify that the evaluation be held within a reasonable period of time not to exceed two hours and shall provide for the appointment of counsel for the individual: *Provided, however,* That the time requirements set forth in this subsection only apply to persons who are not in need of medical care for a physical condition or disease for which the need for treatment precludes the ability to comply with the time requirements. During periods of holding and detention authorized by this subsection, upon consent of the individual or if there is a medical or psychiatric emergency, the individual may receive treatment. The medical provider shall exercise due diligence in determining the individual's existing medical needs and provide treatment the individual requires, including previously prescribed medications. As used in this section, "psychiatric emergency" means an incident during which an individual loses control and behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or others. Where a physician, psychologist, licensed professional counselor, licensed independent clinical social worker, physician assistant, or advanced nurse practitioner with psychiatric certification has, within the preceding 72 hours, performed the examination required by this subsection the community mental health center may waive the duty to perform or arrange another examination upon approving the previously performed examination. Notwithstanding this subsection, §27-5-4(r) of this code applies regarding payment by the county commission for examinations at hearings. If the examination reveals that the individual is not mentally ill or has no substance use disorder, or is determined to be mentally ill or has a substance

use disorder but not likely to cause harm to himself, herself, or others, or the individual has a substance use disorder but has not lost the power of self-control with respect to substance use, is not in need of substance abuse services and, by reason of substance abuse impairment, or his or her judgment has not been so impaired that the individual is incapable of appreciating his or her need for such services and is further incapable of making a rational decision in regard thereto, then the individual shall be immediately released without the need for a probable cause hearing. The examiner shall immediately, but no later than 60 minutes after completion of the examination, provide the mental hygiene commissioner, circuit court, or magistrate before whom the matter is pending, and the state hospital to which the individual may be involuntarily hospitalized, the results of the examination on the form provided for this purpose by the Supreme Court of Appeals for entry of an order reflecting the lack of probable cause.

(2) A mental health service provider authorized under this subsection who performs an involuntary custody examination shall not be civilly liable to any party or non-party to the proceeding regardless of the examination results unless the mental health service provider acted with negligence demonstrated by clear and convincing evidence or in bad faith in performing the examination or rendering his or her opinion.

(f) A probable cause hearing shall be held promptly before a magistrate, the mental hygiene commissioner, or circuit judge of the county of which the individual is a resident or where he or she was found. If requested by the individual or his or her counsel, the hearing may be postponed for a period not to exceed 48 hours. Hearings may be conducted via videoconferencing unless the individual or his or her attorney object for good cause or unless the magistrate, mental hygiene commissioner, or circuit judge orders otherwise. The Supreme Court of Appeals is requested to develop regional mental hygiene collaboratives where mental hygiene commissioners can share on-call responsibilities, thereby reducing the burden on individual circuits and commissioners.

The individual shall be present at the hearing and has the right to present evidence, confront all witnesses and other evidence

against him or her, and examine testimony offered, including testimony by representatives of the community mental health center serving the area. Expert testimony at the hearing may be taken telephonically or via videoconferencing. The individual has the right to remain silent and to be proceeded against in accordance with the Rules of Evidence of the Supreme Court of Appeals, except as provided in §27-1-12 of this code. At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge shall find and enter an order stating whether or not it is likely that deterioration will occur without clinically necessary treatment, or there is probable cause to believe that the individual, as a result of mental illness or substance use disorder, is likely to cause serious harm to himself or herself or to others. Any such order entered shall be provided to the state hospital to which the individual may or will be involuntarily hospitalized within 60 minutes of filing absent good cause.

(g) Probable cause hearings may occur in the county where a person is hospitalized. The judicial hearing officer may: use videoconferencing and telephonic technology; permit persons hospitalized for substance use disorder to be involuntarily hospitalized until detoxification is accomplished and the individual agrees to voluntary treatment for substance use disorder; and specify other alternative or modified procedures that are consistent with the purposes and provisions of this article to promote a prompt, orderly, and efficient hearing. The alternative or modified procedures shall fully and effectively guarantee to the person who is the subject of the involuntary commitment proceeding and other interested parties due process of the law and access to the least restrictive available treatment needed to prevent serious harm to self or others or otherwise remedy the substance use disorder.

(h) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable cause hearing or a mental hygiene commissioner or circuit judge at a final commitment hearing held pursuant to the provisions of §27-5-4 of this code finds that the individual, as a direct result of mental illness or substance use disorder is likely to cause serious harm to himself, herself, or others and because of mental illness or a substance use disorder requires

treatment, the magistrate, mental hygiene commissioner, or circuit court judge may consider evidence on the question of whether the individual's circumstances make him or her amenable to outpatient treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement.

At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge shall find and enter an order stating whether or not it is likely that deterioration will occur without clinically necessary treatment, or there is probable cause to believe that the individual, as a result of mental illness or substance use disorder, is likely to cause serious harm to himself, herself, or others. The agreement is to be in writing and approved by the individual, his or her counsel, and the magistrate, mental hygiene commissioner, or circuit court judge. If the magistrate, mental hygiene commissioner, or circuit court judge determines that appropriate outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be released to outpatient treatment upon the terms and conditions of the voluntary treatment agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary treatment agreement to comply with the terms of the voluntary treatment agreement constitutes evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental hygiene commissioner, or circuit judge on the issue of whether or not the individual failed or refused to comply with the terms and conditions of the voluntary treatment agreement and whether the individual as a result of mental illness or substance use disorder remains likely to cause serious harm to himself, herself, or others, the entry of an order requiring admission under involuntary hospitalization pursuant to §27-5-3 of this code may be entered. Nothing in the provisions of this article regarding release pursuant to a voluntary treatment agreement or convalescent status may be construed as creating a right to receive outpatient mental health services or treatment, or as obligating any person or agency to provide outpatient services or treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a mental health facility for hospitalization do not apply to release pursuant to the terms of a voluntary treatment agreement: *Provided*, That release pursuant to

a voluntary treatment agreement may not be for a period of more than six months if the individual has not been found to be involuntarily committed during the previous two years and for a period of no more than two years if the individual has been involuntarily committed during the preceding two years. If in any proceeding held pursuant to this article the individual objects to the issuance or conditions and terms of an order adopting a voluntary treatment agreement, then the circuit judge, magistrate, or mental hygiene commissioner may not enter an order directing treatment pursuant to a voluntary treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment agreement is ordered, the individual subject to the order may, upon request during the period the order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where the individual may seek to have the order canceled or modified. Nothing in this section affects the appellate and habeas corpus rights of any individual subject to any commitment order.

The commitment of any individual as provided in this article shall be in the least restrictive setting and in an outpatient community-based treatment program to the extent resources and programs are available, unless the clear and convincing evidence of the certifying professional under subsection (e) of this section, who is acting in a manner consistent with the standard of care establishes that the commitment or treatment of that individual requires an inpatient hospital placement. Outpatient treatment will be based upon a plan jointly prepared by the Department of Health Facilities and the comprehensive community mental health center or licensed behavioral health provider.

(i) At any hearing held pursuant to subsection (h) of this section, where an individual is found have to have a substance use disorder under but is not found to be likely to cause serious harm to himself, herself, or others, both probable cause and grounds for involuntary hospitalization exist where the individual has lost the power of self-control with respect to substance use, and the individual is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that the individual is incapable of appreciating his or her

need for such services and is further incapable of making a rational decision in regard thereto: *Provided*, That an individual's mere refusal to receive substance abuse services does not constitute evidence of lack of judgment with respect to his or her need for substance abuse services.

(j) If the certifying professional determines that an individual requires involuntary hospitalization for a substance use disorder as permitted by §27-5-2(a) of this code which, due to the degree of the disorder, creates a reasonable likelihood that withdrawal or detoxification will cause significant medical complications, the person certifying the individual shall recommend that the individual be closely monitored for possible medical complications. If the magistrate, mental hygiene commissioner, or circuit court judge presiding orders involuntary hospitalization, he or she shall include a recommendation that the individual be closely monitored in the order of commitment.

(k) The Supreme Court of Appeals and the Secretaries of the Department of Human Services and Department of Health Facilities shall specifically develop and propose a statewide system for evaluation and adjudication of mental hygiene petitions which shall include payment schedules and recommendations regarding funding sources. Additionally, the Secretaries of the Department of Human Services and Department of Health Facilities shall also immediately seek reciprocal agreements with officials in contiguous states to develop interstate/intergovernmental agreements to provide efficient and efficacious services to out-of-state residents found in West Virginia and who are in need of mental hygiene services.

(l) The amendments to this section enacted during the 2025 regular legislative session, shall be known as the known as the Joel Archer Substance Abuse Intervention Act.

(m) The Supreme Court of Appeals is requested to promulgate rules to implement the amendments made to this section during the 2025 regular session of the Legislature.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

(a) *Involuntary commitment.* — Except as provided in §27-5-2 and §27-5-3 of this code, no individual may be involuntarily committed to a mental health facility or state hospital except by order entered of record at any time by the circuit court of the county in which the person resides or was found, or if the individual is hospitalized in a mental health facility or state hospital located in a county other than where he or she resides or was found, in the county of the mental health facility and then only after a full hearing on issues relating to the necessity of committing an individual to a mental health facility or state hospital. If the individual objects to the hearing being held in the county where the mental health facility is located, the hearing shall be conducted in the county of the individual's residence. Notwithstanding the provisions of this code to the contrary, all hearings for the involuntary final civil commitment of a person who is committed in accordance with §27-6A-1 *et seq.* of this code shall be held by the circuit court of the county that has jurisdiction over the person for the criminal charges and such circuit court shall have jurisdiction over the involuntary final civil commitment of such person.

(b) *How final commitment proceedings are commenced.* — Final commitment proceedings for an individual may be commenced by the filing of a written application under oath by an adult person having personal knowledge of the facts of the case. The certificate or affidavit is filed with the clerk of the circuit court or mental hygiene commissioner of the county where the individual is a resident or where he or she may be found, or the county of a mental health facility if he or she is hospitalized in a mental health facility or state hospital located in a county other than where he or she resides or may be found. Notwithstanding anything any provision of this code to the contrary, all hearings for the involuntary final civil commitment of a person who is committed in accordance with §27-6A-1 *et seq.* of this code shall be commenced only upon the filing of a Certificate of the Licensed

Certifier at the mental health facility where the person is currently committed.

(c) *Oath; contents of application; who may inspect application; when application cannot be filed. —*

(1) The person making the application shall do so under oath.

(2) The application shall contain statements by the applicant that the individual is likely to cause serious harm to self or others due to what the applicant believes are symptoms of mental illness or substance use disorder. Except for persons sought to be committed as provided in §27-6A-1 *et seq.* of this code, the applicant shall state in detail the recent overt acts upon which the clinical opinion is based.

(3) The written application, certificate, affidavit, and any warrants issued pursuant thereto, including any related documents filed with a circuit court, mental hygiene commissioner, or magistrate for the involuntary hospitalization of an individual are not open to inspection by any person other than the individual, unless authorized by the individual or his or her legal representative or by order of the circuit court. The records may not be published unless authorized by the individual or his or her legal representative. Disclosure of these records may, however, be made by the clerk, circuit court, mental hygiene commissioner, or magistrate to provide notice to the Federal National Instant Criminal Background Check System established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. §922, and the central state mental health registry, in accordance with §61-7A-1 *et seq.* of this code, and the sheriff of a county performing background investigations pursuant to §61-7-1 *et seq.* of this code. Disclosure may also be made to the prosecuting attorney and reviewing court in an action brought by the individual pursuant to §61-7A-5 of this code to regain firearm and ammunition rights.

(4) Applications shall be denied for individuals as provided in §27-5-2(a) of this code.

(d) *Certificate filed with application; contents of certificate; affidavit by applicant in place of certificate.* —

(1) The applicant shall file with his or her application the certificate of a physician or a psychologist stating that in his or her opinion the individual is mentally ill or has a substance use disorder and that because of the mental illness or substance use disorder, the individual is likely to cause serious harm to self or others and requires continued commitment and treatment, and should be hospitalized. Alternatively, the applicant shall file with his or her application the certificate of a physician or psychologist stating that in her or her opinion the individual has a substance use disorder, has lost the power of self-control with respect to substance use, is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that the individual is incapable of appreciating his or her need for such services and is further incapable of making a rational decision in regard thereto, and that any mere refusal by the individual to receive substance abuse services was not considered as evidence of lack of judgment with respect to the individual's need for substance abuse services. Except for persons sought to be committed as provided in §27-6A-1 *et seq.* of this code, the certificate shall state in detail the recent overt acts on which the conclusion is based, including facts that less restrictive interventions and placements were considered but are not appropriate and available. The applicant shall further file with his or her application the names and last known addresses of the persons identified in §27-5-4(e)(3) of this code.

(2) A certificate is not necessary when an affidavit is filed by the applicant showing facts and the individual has refused to submit to examination by a physician or a psychologist.

(e) *Notice requirements; eight days' notice required.* — Upon receipt of an application, the mental hygiene commissioner or circuit court shall review the application, and if it is determined that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, immediately fix a date for and have the clerk of the circuit court give notice of the hearing:

(1) To the individual;

(2) To the applicant or applicants;

(3) To the individual's spouse, one of the parents or guardians, or, if the individual does not have a spouse, parents or parent or guardian, to one of the individual's adult next of kin if the next of kin is not the applicant;

(4) To the mental health authorities serving the area;

(5) To the circuit court in the county of the individual's residence if the hearing is to be held in a county other than that of the individual's residence; and

(6) To the prosecuting attorney of the county in which the hearing is to be held.

(f) The notice shall be served on the individual by personal service of process not less than eight days prior to the date of the hearing and shall specify:

(1) The nature of the charges against the individual;

(2) The facts underlying and supporting the application of involuntary commitment;

(3) The right to have counsel appointed;

(4) The right to consult with and be represented by counsel at every stage of the proceedings; and

(5) The time and place of the hearing.

The notice to the individual's spouse, parents or parent or guardian, the individual's adult next of kin, or to the circuit court in the county of the individual's residence may be by personal service of process or by certified or registered mail, return receipt requested, and shall state the time and place of the hearing.

(g) Examination of individual by court-appointed physician, psychologist, advanced nurse practitioner, or physician assistant; custody for examination; dismissal of proceedings. —

(1) Except as provided in subdivision (3) of this subsection, and except when a certificate of the Licensed Examiner and an application for final civil commitment at the mental health facility where the person is currently committed has been completed and filed, within a reasonable time after notice of the commencement of final commitment proceedings is given, the circuit court or mental hygiene commissioner shall appoint a physician, psychologist, an advanced nurse practitioner with psychiatric certification, or a physician assistant with advanced duties in psychiatric medicine to examine the individual and report to the circuit court or mental hygiene commissioner his or her findings as to the mental condition or substance use disorder of the individual and the likelihood of causing serious harm to self or others. Any such report shall include the names and last known addresses of the persons identified in §27-5-4-(e)(3) of this code.

(2) If the designated physician, psychologist, advanced nurse practitioner, or physician assistant reports to the circuit court or mental hygiene commissioner that the individual has refused to submit to an examination, the circuit court or mental hygiene commissioner shall order him or her to submit to the examination. The circuit court or mental hygiene commissioner may direct that the individual be detained or taken into custody for the purpose of an immediate examination by the designated physician, psychologist, nurse practitioner, or physician assistant. All orders shall be directed to the sheriff of the county or other appropriate law-enforcement officer. After the examination has been completed, the individual shall be released from custody unless proceedings are instituted pursuant to §27-5-3 of this code.

(3) If the reports of the appointed physician, psychologist, nurse practitioner, or physician assistant do not confirm that the individual is mentally ill or has a substance use disorder and might be harmful to self or others, or that the individual has a substance use disorder, has lost the power of self-control with respect to substance use, is in need of substance abuse services and, by reason

of substance abuse impairment, his or her judgment has been so impaired that the individual is incapable of appreciating his or her need for such services and is further incapable of making a rational decision in regard thereto, then the proceedings for involuntary hospitalization shall be dismissed: *Provided*, That an individual's mere refusal to receive substance abuse services does not constitute evidence of lack of judgment with respect to his or her need for substance abuse services;

(h) Rights of the individual at the final commitment hearing; seven days' notice to counsel required. —

(1) The individual shall be present at the final commitment hearing, and he or she, the applicant and all persons entitled to notice of the hearing shall be afforded an opportunity to testify and to present and cross-examine witnesses.

(2) If the individual has not retained counsel, the court or mental hygiene commissioner, at least six days prior to hearing, shall appoint a competent attorney and shall inform the individual of the name, address, and telephone number of his or her appointed counsel.

(3) The individual has the right to have an examination by an independent expert of his or her choice and to present testimony from the expert as a medical witness on his or her behalf. The cost of the independent expert is paid by the individual unless he or she is indigent.

(4) The individual may not be compelled to be a witness against himself or herself.

(i) Duties of counsel representing individual; payment of counsel representing indigent. —

(1) Counsel representing an individual shall conduct a timely interview, make investigation, and secure appropriate witnesses, be present at the hearing, and protect the interests of the individual.

(2) Counsel representing an individual is entitled to copies of all medical reports, psychiatric or otherwise.

(3) The circuit court, by order of record, may allow the attorney a reasonable fee not to exceed the amount allowed for attorneys in defense of needy persons as provided in §29-21-1 *et seq.* of this code.

(j) *Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing.* —

(1) The circuit court or mental hygiene commissioner shall hear evidence from all interested parties in chamber, including testimony from representatives of the community mental health facility.

(2) The circuit court or mental hygiene commissioner shall receive all relevant and material evidence which may be offered.

(3) The circuit court or mental hygiene commissioner is bound by the rules of evidence promulgated by the Supreme Court of Appeals except that statements made to health care professionals appointed under subsection (g) of this section by the individual may be admitted into evidence by the health care professional's testimony, notwithstanding failure to inform the individual that this statement may be used against him or her. A health care professional testifying shall bring all records pertaining to the individual to the hearing. The medical evidence obtained pursuant to an examination under this section, or §27-5-2 or §27-5-3 of this code, is not privileged information for purposes of a hearing pursuant to this section.

(4) All final commitment proceedings shall be reported or recorded, whether before the circuit court or mental hygiene commissioner, and a transcript made available to the individual, his or her counsel or the prosecuting attorney within 30 days if requested for the purpose of further proceedings. In any case where an indigent person intends to pursue further proceedings, the circuit court shall, by order entered of record, authorize, and direct the court reporter to furnish a transcript of the hearings.

(k) *Requisite findings by the court.* —

(1) Upon completion of the final commitment hearing and the evidence presented in the hearing, the circuit court or mental hygiene commissioner shall make findings as to the following based upon clear and convincing evidence:

(A) Whether the individual is mentally ill or has a substance use disorder;

(B) Whether, as a result of illness or substance use disorder, the individual is likely to cause serious harm to self or others if allowed to remain at liberty and requires continued commitment and treatment; or whether the individual has a substance use disorder, has lost the power of self-control with respect to substance use, is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that the individual is incapable of appreciating his or her need for such services and is further incapable of making a rational decision in regard thereto: *Provided*, That an individual's mere refusal to receive substance abuse services does not constitute evidence of lack of judgment with respect to his or her need for substance abuse services;

(C) Whether the individual is a resident of the county in which the hearing is held or currently is a patient at a mental health facility in the county; and

(D) Whether there is a less restrictive alternative than commitment appropriate for the individual that is appropriate and available. The burden of proof of the lack of a less restrictive alternative than commitment is on the person or persons seeking the commitment of the individual: *Provided*, That for any commitment to a state hospital as defined by §27-1-6 of this code, a specific finding shall be made that the commitment of, or treatment for, the individual requires inpatient hospital placement and that no suitable outpatient community-based treatment program exists that is appropriate and available in the individual's area.

(2) The findings of fact shall be incorporated into the order entered by the circuit court and must be based upon clear, cogent, and convincing proof.

(1) Orders issued pursuant to final commitment hearing; entry of order; change in order of court; expiration of order. —

(1) Upon the requisite findings, the circuit court may order the individual to a mental health facility or state hospital for a period not to exceed 90 days except as otherwise provided in this subdivision. During that period and solely for individuals who are committed under §27-6A-1 *et seq.* of this code, the chief medical officer of the mental health facility or state hospital shall conduct a clinical assessment of the individual at least every 30 days to determine if the individual requires continued placement and treatment at the mental health facility or state hospital and whether the individual is suitable to receive any necessary treatment at an outpatient community-based treatment program. If at any time the chief medical officer, acting in good faith and in a manner consistent with the standard of care, determines that: (i) The individual is suitable for receiving outpatient community-based treatment; (ii) necessary outpatient community-based treatment is available in the individual's area as evidenced by a discharge and treatment plan jointly developed by the Department of Health Facilities and the comprehensive community mental health center or licensed behavioral health provider; and (iii) the individual's clinical presentation no longer requires inpatient commitment, the chief medical officer shall provide written notice to the court of record and prosecuting attorney as provided in subdivision (2) of this subsection that the individual is suitable for discharge. The chief medical officer may discharge the patient 30 days after the notice unless the court of record stays the discharge of the individual. In the event the court stays the discharge of the individual, the court shall conduct a hearing within 45 days of the stay, and the individual shall be thereafter discharged unless the court finds by clear and convincing evidence that the individual is a significant and present danger to self or others, and that continued placement at the mental health facility or state hospital is required.

If the chief medical officer determines that the individual requires commitment and treatment at the mental health facility or state hospital at any time for a period longer than 90 days, then the individual shall remain at the mental health facility or state hospital until the chief medical officer of the mental health facility or state hospital determines that the individual's clinical presentation no longer requires further commitment and treatment. The chief medical officer shall provide notice to the court, the prosecuting attorney, the individual, and the individual's guardian or attorney, or both, if applicable, that the individual requires commitment and treatment for a period in excess of 90 days and, in the notice, the chief medical officer shall describe how the individual continues to meet commitment criteria and the need for ongoing commitment and treatment. The court, prosecuting attorney, the individual, or the individual's guardian or attorney, or both, if applicable, may request any information from the chief medical officer that the court or prosecuting attorney considers appropriate to justify the need for the individual's ongoing commitment and treatment. The court may hold any hearing that it considers appropriate.

(2) Notice to the court of record and prosecuting attorney shall be provided by personal service or certified mail, return receipt requested. The chief medical officer shall make the following findings:

(A) Whether the individual has a mental illness or substance use disorder that does not require inpatient treatment, and the mental illness or serious emotional disturbance is in substantial remission;

(B) Whether the individual has the independent ability to manage safely the risk factors resulting from his or her mental illness or substance use disorder and is not likely to deteriorate to the point that the individual will pose a likelihood of serious harm to self or others without continued commitment and treatment; or whether the individual has a substance use disorder, has lost the power of self-control with respect to substance use, is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that the individual is incapable of appreciating his or her need for such

services and is further incapable of making a rational decision in regard thereto: *Provided*, That an individual's mere refusal to receive substance abuse services does not constitute evidence of lack of judgment with respect to his or her need for substance abuse services;

(C) Whether the individual is likely to participate in outpatient treatment with a legal obligation to do so;

(D) Whether the individual is not likely to participate in outpatient treatment unless legally obligated to do so;

(E) Whether the individual is capable of surviving safely in freedom by himself or herself or with the help of willing and responsible family members, guardian, or friends; and

(F) Whether mandatory outpatient treatment is a suitable, less restrictive alternative to ongoing commitment.

(3) The individual may not be detained in a mental health facility or state hospital for a period in excess of 10 days after a final commitment hearing pursuant to this section unless an order has been entered and received by the facility.

(4) An individual committed pursuant to §27-6A-3 of this code may be committed for the period he or she is determined by the court to remain an imminent danger to self or others.

(5) If the commitment of the individual as provided under subdivision (1) of this subsection exceeds two years, the individual or his or her counsel may request a hearing and a hearing shall be held by the mental hygiene commissioner or by the circuit court of the county as provided in subsection (a) of this section.

(m) *Dismissal of proceedings.* — If the individual is discharged as provided in subsection (l) of this section, the circuit court or mental hygiene commissioner shall dismiss the proceedings.

(n) *Immediate notification of order of hospitalization.* — The clerk of the circuit court in which an order directing hospitalization is entered, if not in the county of the individual's residence, shall

immediately upon entry of the order forward a certified copy of the order to the clerk of the circuit court of the county of which the individual is a resident.

(o) *Consideration of transcript by circuit court of county of individual's residence; order of hospitalization; execution of order.*

(1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization should be ordered but finds that the individual is not a resident of the county in which the hearing is held and the individual is not currently a resident of a mental health facility or state hospital, a transcript of the evidence adduced at the final commitment hearing of the individual, certified by the clerk of the circuit court, shall immediately be forwarded to the clerk of the circuit court of the county of which the individual is a resident. The clerk shall immediately present the transcript to the circuit court or mental hygiene commissioner of the county.

(2) If the circuit court or mental hygiene commissioner of the county of the residence of the individual is satisfied from the evidence contained in the transcript that the individual should be hospitalized as determined by the standard set forth in subdivision one of this subsection, the circuit court shall order the appropriate hospitalization as though the individual had been brought before the circuit court or its mental hygiene commissioner in the first instance.

(3) This order shall be transmitted immediately to the clerk of the circuit court of the county in which the hearing was held who shall execute the order promptly.

(p) *Order of custody to responsible person.* — In lieu of ordering the individual to a mental health facility or state hospital, the circuit court may order the individual delivered to some responsible person who will agree to take care of the individual and the circuit court may take from the responsible person a bond in an amount to be determined by the circuit court with condition to restrain and take proper care of the individual until further order of the court.

(q) *Individual not a resident of this state.* — If the individual is found to be mentally ill or to have a substance use disorder by the circuit court or mental hygiene commissioner is a resident of another state, this information shall be immediately given to the Secretary of the Department of Health Facilities, or to his or her designee, who shall make appropriate arrangements for transfer of the individual to the state of his or her residence conditioned on the agreement of the individual, except as qualified by the interstate compact on mental health.

(r) *Report to the Secretary of the Department of Health Facilities.* —

(1) The chief medical officer of a mental health facility or state hospital admitting a patient pursuant to proceedings under this section shall immediately make a report of the admission to the Secretary of the Department of Health Facilities or to his or her designee.

(2) Whenever an individual is released from custody due to the failure of an employee of a mental health facility or state hospital to comply with the time requirements of this article, the chief medical officer of the mental health or state hospital facility shall immediately, after the release of the individual, make a report to the Secretary of the Department of Health Facilities or to his or her designee of the failure to comply.

(s) *Payment of some expenses by the state; mental hygiene fund established; expenses paid by the county commission.* —

(1) The state shall pay the commissioner's fee and the court reporter fees that are not paid and reimbursed under §29-21-1 *et seq.* of this code out of a special fund to be established within the Supreme Court of Appeals to be known as the Mental Hygiene Fund.

(2) The county commission shall pay out of the county treasury all other expenses incurred in the hearings conducted under the provisions of this article whether or not hospitalization is ordered, including any fee allowed by the circuit court by order entered of

record for any physician, psychologist, and witness called by the indigent individual. The copying and mailing costs associated with providing notice of the final commitment hearing and issuance of the final order shall be paid by the county where the involuntary commitment petition was initially filed.

(3) The Department of Health Facilities shall reimburse the sheriff, the Department of Corrections and Rehabilitation, or other law-enforcement agency for the actual costs related to transporting a patient who has been involuntary committed.

(t) *Completion of substance use disorder rehabilitation program.* —

(1) An individual involuntarily committed on the basis of a substance use disorder who completes a substance use rehabilitation treatment program pursuant to the provisions of §27-2-1 *et seq.* of this code shall not be considered “a person adjudicated to be mentally defective” or “having had a prior involuntary commitment to a mental institution” for purposes of firearm possession under §61-7A-1 *et seq.* of this code.

(2) An individual involuntary committed on the basis of a substance use disorder who completes an outpatient or inpatient substance use rehabilitation treatment program may petition the Administrator of the Supreme Court of Appeals or the Superintendent of the West Virginia State Police to have his or her name removed from the central state mental health registry.

(u) The Supreme Court of Appeals is requested to promulgate rules to implement the amendments made to this section during the 2025 regular session of the Legislature.



CHAPTER 231

(Com. Sub. for S. B. 1 - By Senators Chapman and Rucker)

[Passed April 11, 2025; in effect 90 days from passage (July 10, 2025)]

[Approved by the Governor on April 24, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding a new section, designated §17-4-8a, relating to road paving and utility work coordination; defining terms; requiring reports by utilities; requiring report review by the Division of Highways and posting of information on its website; and requiring restoration work by utilities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-8a. Road paving and utility work coordination.

(a) In order to avoid the destruction of newly paved roads, each utility and the Division of Highways shall coordinate with each other concerning the timing of paving activity and utility work that disturbs any paved road.

(b) For purposes of this section:

(1) “Paved road” means any paved road in the state road system.

(2) “Paving activity” means any paving or resurfacing of at least 300 linear feet of a state right-of-way but excludes patching.

(3) “Utility” means any utility as defined in §17-2A-17a of this code.

(c) (1) Beginning on December 31, 2025, and due annually on or before that date thereafter, each utility shall provide a report that lists all projects planned by the utility, during the next two years including anticipated construction start and stop dates, that require digging or cutting into any paved road to the district office of the Division of Highways in which the paved road is located. The report shall also include identification of any grants that have either been received or applied for that may result in work that affects a paved road. The Division of Highways shall review and consider such reports in conjunction with the division's planning of projects and paving activity.

(2) If the utility does not have plans to improve or replace any road asset under consideration in the next two calendar years, the said utility may submit a "no plans report" and opt out of the yearly report. Failure to comply with these reporting requirements may result in the Division of Highways to withhold issuing a "Right of Way Entry Permit" until the required report is submitted.

(d) Beginning September 1, 2025, the Division of Highways shall make available on the division's website the following:

(1) A map of its districts;

(2) A list of all planned paving activities with approximate paving activity dates and with reasonable paving activity location information; and

(3) A copy of all reports provided by a utility by district pursuant to this section for the most current year.

(e) Nothing in this section prohibits the Division of Highways from filling potholes or performing other necessary maintenance work for the safety of vehicular or foot traffic upon roads that are scheduled for utility projects.

(f) Nothing in this section prohibits a utility from digging or cutting and subsequently patching paved roads in accordance with §17-16-6 of this code in order to perform necessary utility repairs or projects. After performing any work that damages a paved road or other public right-of-way, the utility shall repair the road or

right-of-way in accordance with the West Virginia Division of Highways Accommodation of Utilities on Highway Right-of-Way and Adjustment and Relocation of Utility Facilities on Highway Projects latest manual.

CHAPTER 232

**(Com. Sub. for S. B. 573 - By Senators Queen, Rose, Taylor,
Rucker, Maynard, and Thorne)**

[Passed April 4, 2025; in effect 90 days from passage (July 3, 2025)]
[Approved by the Governor on April 24, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding a new article, designated §1-8-1, relating to restrictions on powers of state agencies and political subdivisions; prohibiting state agencies and political subdivisions from restricting use, purchase, or sale of motor vehicles based on energy or power source; defining terms; and providing exceptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. RESTRICTIONS ON POWERS OF STATE AGENCIES AND POLITICAL SUBDIVISIONS.

§1-8-1. Restrictions of motor vehicles based on power source prohibited.

(a) No state agency or political subdivision of this state may restrict the use, purchase, or sale of motor vehicles based on the energy source used to:

- (1) Power the motor vehicle for propulsion; or
- (2) Power other functions of the motor vehicle.

(b) For purposes of this section:

(1) "Motor vehicle" means a self-propelled device designed to transport persons or property from one place to another and

includes, but is not limited to, a “farm tractor” or “implement of husbandry” as defined in §17A-1-1 of this code, but excludes “electric bicycles” as defined in §17C-1-70 of this code;

(2) “State agency” means any authority, board, department, instrumentality, institution, agency, or other unit of state government; and

(3) “Use” refers to the use on a publicly maintained right-of-way that is open to the use of the public for purposes of vehicular travel.

(c) This section does not affect or invalidate any rule or policy established by a state agency or a political subdivision of this state related to the use, purchase, or sale of motor vehicles by that state agency or political subdivision.

CHAPTER 233

(Com. Sub. for S. B. 794 - By Senator Maynard)

[Passed April 11, 2025; in effect 90 days from passage (July 10, 2025)]
[Approved by the Governor on April 24, 2025.]

AN ACT to amend and reenact §17-2A-8 of the Code of West Virginia, 1931, as amended, relating to authorizing the Commissioner of the Division of Highways to erect warning signs.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-8. Powers, duties, and responsibilities of commissioner.

In addition to all other duties, powers, and responsibilities given and assigned to the commissioner in this chapter, the commissioner may:

(1) Exercise general supervision over the state road program and the construction, reconstruction, repair, and maintenance of state roads and highways: *Provided*, That the commissioner shall implement reasonable design techniques intended to minimize damage that may result from recurring floods within the purpose and need of the state road system;

(2) Determine the various methods of road construction best adapted to the various sections and areas of the state and establish standards for the construction and maintenance of roads and highways in the various sections and areas of the state;

(3) Conduct investigations and experiments, hold hearings and public meetings, and attend and participate in meetings and conferences within and without the state for purposes of acquiring information, making findings, and determining courses of action and procedure relative to advancement and improvement of the state road and highway system;

(4) Enter private lands to make inspections and surveys for road and highway purposes;

(5) Acquire, in the name of the division, by lease, grant, right of eminent domain, or other lawful means all lands and interests and rights in lands necessary and required for roads, rights-of-way, cuts, fills, drains, storage for equipment and materials, and road construction and maintenance in general;

(6) Procure photostatic copies of any or all public records on file at the State Capitol of Virginia which may be considered necessary or proper in ascertaining the location and legal status of public road rights-of-way located or established in what is now the state of West Virginia, which when certified by the commissioner, may be admitted in evidence, in lieu of the original, in any of the courts of this state;

(7) Plan for and hold annually a school of good roads, of not less than three or more than six days' duration, for instruction of his or her employees, which is held in conjunction with West Virginia University and may be held at the university or at any other suitable place in the state;

(8) Negotiate and enter in reciprocal contracts and agreements with proper authorities of other states and of the United States relating to and regulating the use of roads and highways with reference to weights and types of vehicles, registration of vehicles and licensing of operators, military and emergency movements of personnel and supplies, and all other matters of interstate or national interest;

(9) Classify and reclassify, locate, and relocate, expressway, trunkline, feeder, and state local service roads, and designate by number the routes within the state road system;

(10) Create, extend, or establish, upon petition of any interested party or parties or on the commissioner's own initiative, any new road or highway found necessary and proper;

(11) Exercise jurisdiction, control, supervision, and authority over local roads, outside the state road system, to the extent determined by him or her to be expedient and practicable;

(12) Discontinue, vacate, and close any road or highway, or any part of any road or highway, the continuance and maintenance of which are found unnecessary and improper, upon petition and hearing or upon investigation initiated by the commissioner. Any petition, motion, notice, decision, and order related to the discontinuance, vacating, or closing of any road or highway or part thereof shall be posted by the commissioner on the division's website available for review by the public. The division shall make virtual participation available to any person interested in participating in or attending any hearing related to such discontinuance, vacating, or closing;

(13) Close any state road while under construction or repair and provide a temporary road during the time of the construction or repair;

(14) Adjust damages occasioned by construction, reconstruction, or repair of any state road or the establishment of any temporary road;

(15) Establish and maintain a uniform system of road signs and markers;

(16) Fix standard widths for road rights-of-way, bridges, and approaches to bridges and fix and determine grades and elevations therefor;

(17) Test and standardize materials used in road construction and maintenance, either by governmental testing and standardization activities or through contract by private agencies;

(18) Allocate the cost of retaining walls and drainage projects, for the protection of a state road or its right-of-way, to the cost of construction, reconstruction, improvement, or maintenance;

(19) Acquire, establish, construct, maintain, and operate, in the name of the division, roadside recreational areas along and adjacent to state roads and highways;

(20) Exercise general supervision over the construction and maintenance of airports and landing fields under the jurisdiction of the West Virginia State Aeronautics Commission, of which the commissioner is a member, and make a study and general plan of a statewide system of airports and landing fields;

(21) Provide traffic engineering services to municipalities of the state upon request of the governing body of any municipality and upon terms that are agreeably arranged;

(22) Institute complaints before the Public Service Commission or any other appropriate governmental agency relating to freight rates, car service, and movement of road materials and equipment;

(23) Invoke any appropriate legal or equitable remedies, subject to §17-2A-7 of this code, to enforce his or her orders, to compel compliance with requirements of law, and to protect and preserve the state road and highway system or any part of the system;

(24) Make and promulgate rules for the government and conduct of personnel, for the orderly and efficient administration and supervision of the state road program, and for the effective and expeditious performance and discharge of the duties and responsibilities placed upon him or her by law;

(25) Delegate powers and duties to his or her appointees and employees who shall act by and under his or her direction and be responsible to him or her for their acts;

(26) Designate and define any construction and maintenance districts within the state road system that is found expedient and practicable;

(27) Contract for the construction, improvement, and maintenance of the roads;

(28) Comply with provisions of present and future federal aid statutes and regulations, including execution of contracts or agreements with and cooperation in programs of the United States government and any proper department, bureau, or agency of the United States government relating to plans, surveys, construction, reconstruction, improvement, and maintenance of state roads and highways;

(29) Prepare budget estimates and requests;

(30) Establish a system of accounting covering and including all fiscal and financial matters of the division;

(31) Establish and advance a right-of-way Acquisition Revolving Fund, a Materials Revolving Fund, and an Equipment Revolving Fund;

(32) Enter into contracts and agreements with and cooperate in programs of counties, municipalities, and other governmental agencies and subdivisions of the state relating to plans, surveys, construction, reconstruction, improvement, maintenance, and supervision of highways, roads, streets, and other travel ways when and to the extent determined by the division to be expedient and practical;

(33) Report, as provided by law, to the Governor and the Legislature;

(34) Purchase materials, supplies, and equipment required for the state road program and system;

(35) Dispose of all obsolete and unusable and surplus supplies and materials which cannot be used advantageously and beneficially by the division in the state road program by transfer of the supplies and materials to other governmental agencies and institutions by exchange, trade, or sale of the supplies and materials;

(36) Investigate road conditions, official conduct of division personnel, and fiscal and financial affairs of the division and hold hearings and make findings thereon or on any other matters within the jurisdiction of the division;

(37) Establish road policies and administrative practices;

(38) Fix and revise from time to time tolls for transit over highway projects constructed by the Division of Highways after May 1, 1999, that have been authorized by the provisions of §17-17A-5b of this code;

(39) Take actions necessary to alleviate any conditions as the Governor may declare to constitute an emergency, whether or not the emergency condition affects areas normally under the jurisdiction of the Division of Highways;

(40) Provide family restrooms at all rest areas along interstate highways in this state, all to be constructed in accordance with federal law; and

(41) Design and place signs and markers that do not jeopardize federal highway funding, including, but not limited to, warning signs that advise of unimproved or primitive roads and urge high ground clearance four-wheel drive vehicle use.

CHAPTER 234

**(Com. Sub. for H. B. 2960 - By Delegates McCormick,
Jennings, Statler, Chiarelli, and Street)**

[Passed April 11, 2025; in effect 90 days from passage (July 10, 2025)]
[Approved by the Governor on April 30, 2025.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding a new article, designated §17-9-1, relating to a pilot program for snow removal; stating legislative findings; establishing a priority schedule for state routes in regard to snow removal; requiring requests for proposals for multiple vendors to provide snow removal; establishing a time limit on the pilot program; providing that the Division of Highways has sole discretion in identifying the specific roads requiring maintenance under this pilot program; establishing liability; and providing for cancellation of snow removal contracts for cause.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. GENERAL PROVISIONS APPLICABLE TO STATE ROADS.

§17-9-1. Snow removal pilot program.

(a) The Legislature finds that snow removal in the state – particularly on secondary roads in Monongalia County and Preston County – has not been dependable, thereby providing a hardship on the citizens of West Virginia.

(b) The Division of Highways shall provide snow removal for all 55 counties of the State of West Virginia, with roads being prioritized into four categories:

(1) Priority One Routes: Interstate, Expressway, National Highway System, and all other United States and West Virginia routes with some Priority One routes also including high-traffic county routes;

(2) Priority Two Routes: All other school bus routes that are not considered Priority One;

(3) Priority Three Routes: Remaining routes, not including park and forest routes; and

(4) Priority Four Routes: Park and forest routes.

(c) The Division of Highways shall establish a two-year pilot program to issue Requests for Proposals for multiple vendors to provide snow removal for West Virginia Division of Highways District Four's secondary roads in Monongalia County and Preston County.

(d) The Division of Highways shall have sole discretion in identifying the specific roads requiring maintenance under this pilot program.

(e) No vendor employed to remove snow and ice from the secondary roads in Monongalia County and Preston County shall be afforded immunity from legal liability owing to any damage it may cause.

(f) The Commissioner of the Division of Highways may terminate any contract related to snow removal with 30 days' notice for cause.



CHAPTER 235

**(Com. Sub. for H. B. 2964 - By Delegates DeVault, Mallow,
Ferrell, and Fehrenbacher)**

[Passed April 9, 2025; in effect 90 days from passage (July 8, 2025)]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §8-29-6 of the Code of West Virginia, 1931, as amended, relating to allowing members of regional airport boards to be a resident of the municipality or county in which the airport is located.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. INTERGOVERNMENTAL RELATIONS — REGIONAL AIRPORTS.

§8-29-6. Qualification of members.

To be qualified to serve, members of the board of each authority shall be drawn from residents of the municipality(ies) and/or contiguous county(ies) which created and established the regional airport authority. The municipality or county is each authorized to make their regional airport authority board appointments from within either government entity's boundaries. Such regional airport authority board membership may be composed of any combination of such qualified municipal and county residents, with number of votes of each municipality and county to remain subject to the requirements of §8-29-4 of this code.

CHAPTER 236

(Com. Sub. for Com. Sub. for H. B. 2441 - By Delegate Street)

[Passed April 3, 2025; in effect 90 days from passage (July 2, 2025)]
[Approved by the Governor on April 14, 2025.]

AN ACT to amend and reenact §21A-6-3 of the Code of West Virginia, 1931, as amended, relating to unemployment compensation; and providing that an employee is disqualified for benefits if discharged from work because of failure of random testing for alcohol or illegal controlled substances, where alcohol or drug use creates an inherent risk to the health and safety of the employee or others, or where the employee is employed in a safety-sensitive position.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-3. Disqualification for benefits.

Upon the determination of the facts by the commissioner, an individual is disqualified for benefits:

(1) For the week in which he or she left his or her most recent work voluntarily without good cause involving fault on the part of the employer and until the individual returns to covered employment and has been employed in covered employment at least 30 working days.

For the purpose of this subdivision, an individual has not left his or her most recent work voluntarily without good cause involving fault on the part of the employer if the individual leaves his or her most recent work with an employer and if he or she in fact, within a 14-day calendar period, does return to employment

with the last preceding employer with whom he or she was previously employed within the past year prior to his or her return to work, and which last preceding employer, after having previously employed the individual for 30 working days or more, laid off the individual because of lack of work, which layoff occasioned the payment of benefits under this chapter or could have occasioned the payment of benefits under this chapter had the individual applied for benefits. It is the intent of this paragraph to cause no disqualification for benefits for an individual who complies with the foregoing set of requirements and conditions. Further, for the purpose of this subdivision, an individual has not left his or her most recent work voluntarily without good cause involving fault on the part of the employer, if the individual was compelled to leave his or her work for his or her own health-related reasons and notifies the employer prior to leaving the job or within two business days after leaving the job or as soon as practicable and presents written certification from a licensed physician within 30 days of leaving the job that his or her work aggravated, worsened, or will worsen the individual's health problem.

(2) For the week in which he or she was discharged from his or her most recent work for misconduct and the six weeks immediately following that week; or for the week in which he or she was discharged from his or her last 30-day employing unit for misconduct and the six weeks immediately following that week. The disqualification carries a reduction in the maximum benefit amount equal to six times the individual's weekly benefit. However, if the claimant returns to work in covered employment for 30 days during his or her benefit year, whether or not the days are consecutive, the maximum benefit amount is increased by the amount of the decrease imposed under the disqualification; except that:

If he or she were discharged from his or her most recent work for one of the following reasons, or if he or she were discharged from his or her last 30 days employing unit for one of the following reasons: Gross misconduct consisting of willful destruction of his or her employer's property; assault upon the person of his or her employer or any employee of his or her employer; if the assault is

committed at the individual's place of employment or in the course of employment; reporting to work in an intoxicated condition, or being intoxicated while at work; reporting to work under the influence of any controlled substance, as defined in chapter 60A of this code without a valid prescription, or being under the influence of any controlled substance, as defined in said chapter without a valid prescription, while at work; adulterating or otherwise manipulating a sample or specimen in order to thwart a drug or alcohol test lawfully required of an employee; refusal to submit to, or failure of, random testing for alcohol or illegal controlled substances for employees in an employment position where alcohol or drug use creates an inherent risk to the health and safety of the employee or others, or employees in safety-sensitive positions as defined in §21-1D-2 of this code; violation of an employer's drug-free workplace program; violation of an employer's alcohol-free workplace program; arson, theft, larceny, fraud, or embezzlement in connection with his or her work; or any other gross misconduct, he or she is disqualified for benefits until he or she has thereafter worked for at least 30 days in covered employment: *Provided*, That for the purpose of this subdivision, the words "any other gross misconduct" includes, but is not limited to, any act or acts of misconduct where the individual has received prior written warning that termination of employment may result from the act or acts.

(3) For the week in which he or she failed without good cause to apply for available, suitable work, accept suitable work when offered, or return to his or her customary self-employment when directed to do so by the commissioner, and for the four weeks which immediately follow for such additional period as any offer of suitable work shall continue open for his or her acceptance. The disqualification carries a reduction in the maximum benefit amount equal to four times the individual's weekly benefit amount.

(4) For any week or portion thereof in which he or she did not work as a result of:

(a) A strike or other bona fide labor dispute which caused him or her to leave or lose his or her employment.

(b) A lockout is not a strike or a bona fide labor dispute and no individual may be denied benefits by reason of a lockout. However, the operation of a facility by nonstriking employees of the company, contractors, or other personnel is not a reason to grant employees of the company on strike unemployment compensation benefit payments. If the operation of a facility is with workers hired to permanently replace the employees on strike, the employees would be eligible for benefits.

(c) For the purpose of this subsection, an individual shall be determined to leave or lose his or her employment by reason of a lockout where the individual employee has established that: (i) The individual presented himself or herself physically for work at the workplace on the first day of such lockout or on the first day he or she is able to present himself at the workplace or herself; and (ii) the employer denied the individual the opportunity to perform work.

(d) For purposes of this subsection, an individual is determined to be permanently replaced where the individual employee establishes that: (i) He or she is currently employed by an employer who is the subject of a strike or other bona fide labor dispute; and (ii) the position of the employee has been occupied by another employee who has been notified they are permanently replacing the employee who previously occupied the position. Employees or contractors who are hired to perform striking employees' work on a temporary basis, such as the duration of a strike or other bona fide labor dispute, or a shorter period of time, may not be determined to have permanently replaced a striking employee.

(5) For a week with respect to which he or she is receiving or has received:

(a) Wages in lieu of notice;

(b) Compensation for temporary total disability under the workers' compensation law of any state or under a similar law of the United States; or

(c) Unemployment compensation benefits under the laws of the United States or any other state.

(6) For the week in which an individual has voluntarily quit employment to marry or to perform any marital, parental, or family duty, or to attend to his or her personal business or affairs and until the individual returns to covered employment and has been employed in covered employment at least 30 working days: *Provided*, That an individual who has voluntarily quit employment to accompany a spouse serving in active military service who has been reassigned from one military assignment to another is not disqualified for benefits pursuant to this subdivision: *Provided, however*, That the account of the employer of an individual who leaves the employment to accompany a spouse reassigned from one military assignment to another may not be charged.

(7) Benefits may not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if the individual performed the services in the first of the seasons (or similar periods) and there is a reasonable assurance that the individual will perform the services in the later of the seasons (or similar periods).

(8) (a) Benefits may not be paid on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services or was permanently residing in the United States under color of law at the time the services were performed (including an alien who is lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act): *Provided*, That any modifications to the provisions of Section 3304(a)(14) of the federal Unemployment Tax Act as provided by Public Law 94-566 which specify other conditions or other effective date than stated in this subdivision for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit

against the tax imposed by the federal Unemployment Tax Act are applicable under the provisions of this section.

(b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of his or her alien status may be made except upon a preponderance of the evidence.

(9) For each week in which an individual is unemployed because, having voluntarily left employment to attend a school, college, university, or other educational institution, he or she is attending that school, college, university, or other educational institution, or is awaiting entrance thereto or is awaiting the starting of a new term or session thereof, and until the individual returns to covered employment.

(10) For each week in which he or she is unemployed because of his or her request, or that of his or her duly authorized agent, for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations.

(11) In the case of an individual who accepts an early retirement incentive package, unless he or she: (i) Establishes a well-grounded fear of imminent layoff supported by definitive objective facts involving fault on the part of the employer; and (ii) establishes that he or she would suffer a substantial loss by not accepting the early retirement incentive package.

(12) For each week with respect to which he or she is receiving or has received benefits under Title II of the Social Security Act or similar payments under any Act of Congress, or remuneration in the form of an annuity, pension, or other retirement pay from a base period employer or chargeable employer or from any trust or fund contributed to by a base period employer or chargeable employer or any combination of the above, the weekly benefit amount

payable to the individual for that week shall be reduced (but not below zero) by the prorated weekly amount of those benefits, payments, or remuneration: *Provided*, That if the amount of benefits is not a multiple of \$1, it shall be computed to the next lowest multiple of \$1: *Provided, however*, That there is no disqualification if in the individual's base period there are no wages which were paid by the base period employer or chargeable employer paying the remuneration, or by a fund into which the employer has paid during the base period: *Provided further*, That notwithstanding any other provision of this subdivision to the contrary, the weekly benefit amount payable to the individual for that week may not be reduced by any retirement benefits he or she is receiving or has received under Title II of the Social Security Act or similar payments under any Act of Congress. A claimant may be required to certify as to whether or not he or she is receiving or has been receiving remuneration in the form of an annuity, pension, or other retirement pay from a base period employer or chargeable employer or from a trust fund contributed to by a base period employer or chargeable employer.

(13) For each week in which and for 52 weeks thereafter, beginning with the date of the decision, if the commissioner finds the individual who within 24 calendar months immediately preceding the decision, has made a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or payment under this article: *Provided*, That disqualification under this subdivision does not preclude prosecution under §21A-10-7 of this code.

CHAPTER 237

**(Com. Sub. for H. B. 3179 - By Delegates Kyle and D.
Cannon)**

[Passed April 10, 2025; in effect 90 days from passage (July 9, 2025)]
[Approved by the Governor on April 29, 2025.]

AN ACT to amend and reenact §24-2H-7 of the Code of West Virginia, 1931, as amended, relating to utility acquisitions; limiting the commission's authority on ordering the acquisition of distressed or failing authorities; and establishing guidelines for when the commission can order acquisitions.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2H. POWER OF COMMISSION TO ORDER
MEASURES UP TO AND INCLUDING THE
ACQUISITION OF DISTRESSED AND FAILING
WATER AND WASTEWATER UTILITIES.**

**§24-2H-7. Commission order for acquisition of failing utility;
list of distressed and failing utilities to Legislature.**

(a) Following the evidentiary hearing, the commission shall enter a final order stating whether the utility is a distressed or failing utility and identifying the capable proximate utilities, if any, as defined in §24-2H-3 of this code. If the commission determines that a utility is a distressed utility, then the commission may make an order consistent with subsection (b) of this section. If the commission determines that the utility is a failing utility, then the commission may order the acquisition of the failing utility by the most suitable capable proximate water or wastewater utility, if there is more than one.

(b) Before the commission may designate a water or wastewater utility as failing and order acquisition by a capable proximate utility it shall determine whether there are any alternatives to an ordered acquisition. If the commission determines that an alternative to designating a utility as failing and ordering an acquisition is reasonable and cost effective, it may order the distressed utility and, if applicable to the alternative a capable proximate utility, to implement the alternative. Commission staff shall work with the utility to implement the alternative, as necessary. Alternatives that the commission may consider include, but are not limited to, the following:

(1) Reorganization of the utility under new management or a new board, subject to the approval of the applicable county commission(s) or municipal government;

(2) Operation of the distressed utility by another public utility or management or service company under a mutually agreed arms-length contract;

(3) Appointment of a receiver to assure the provision of adequate, efficient, safe and reasonable service and facilities to the public pursuant to §24-2-7(b) of this code;

(4) Merger of the water or wastewater utility with one or more other public utilities, subject to the approval of the applicable county commission(s) or municipal government;

(5) The acquisition of the distressed utility through a mutual agreement made at arms-length; and

(6) Any viable alternative other than an ordered acquisition by a capable proximate utility.

(c) The commission shall provide a list of utilities designated by a final order of the commission as a distressed or failing utility to the Legislature as part of its annual Management Summary Report beginning in the 2021 reporting period and annually thereafter. The commission shall provide the same list to the Water Development Authority and the Infrastructure and Jobs

Development Council on or before January 31 of each year beginning in 2021.

(d) Notwithstanding any provision of this code to the contrary, the commission shall not order a utility to acquire a distressed or failing utility if the aggregate cost of necessary capital improvements for the distressed or failing utility which will be borne by the acquiring utility exceeds:

(1) the aggregate required contribution under the commission's extension of mains rules for new customers; or

(2) grant funds from the Water Development Authority Distressed Utilities Account created under §31-15A-9(i) of this code; or

(3) other grant funds; or

(4) any combination of the above.

CHAPTER 238

(H. B. 3263 - By Delegates Pushkin and Young)

[Passed April 12, 2025; in effect 90 days from passage (July 10, 2025)]
[Approved by the Governor on April 29, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-22, relating to requiring utilities to create outage communication plans to notify customers of any planned and any unexpected disruption of utility services; providing plan content requirements; and requiring filing of plan with the Public Service Commission.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-22. Service outage communication plans.

(a) Each utility shall have an outage communication plan in place to notify customers of any planned and any unexpected disruption of utility services. Such outage communication plan shall, at a minimum, include a methodology for advance notification to all affected customers for planned service disruptions, methods of communication, and notification content requirements concerning the outage, including an estimate of the duration and end of the outage.

(b) Each utility shall file its outage communication plan with the commission.

CHAPTER 239

(Com. Sub. for H. B. 2121 - By Delegates D. Smith, Cooper, Criss, Heckert, Hillenbrand, McGeehan, Sheedy, Hite, Hornby, Gearheart, and Zatezalo)

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]
[Approved by the Governor on April 28, 2025.]

AN ACT to amend and reenact §11-13MM-2 and §11-13MM-4 of the Code of West Virginia, 1931, as amended, relating to providing for a real property tax credit for eligible widowed spouses of disabled veteran taxpayers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13MM. WEST VIRGINIA PROPERTY TAX ADJUSTMENT ACT.

§11-13MM-2. Definitions.

(a) *General.* — When used in this article, or in the administration of this article, terms defined in subsection (b) of this section have the meanings ascribed to them by this section unless a different meaning is clearly required by the context in which the term is used.

(b) *Terms defined.* —

(1) "Ad valorem property tax" means and is limited to the West Virginia ad valorem property tax.

(2) "Business" means any activity taxable under article §11-12-1 *et seq.* of this code, which is engaged in by any person in this State.

(3) "Disabled veteran taxpayer" means a person given an honorable discharge from any branch of the armed services of the United States and who is considered at least 90 percent totally and permanently disabled due solely to service-connected disabilities by the United States Department of Veterans Affairs.

(4) "Eligible motor vehicle" means a motor vehicle on which the ad valorem property tax has been paid for the taxable year by the eligible taxpayer, and which is a motor vehicle as defined in this article.

(5) "Eligible widowed spouse" means the unmarried surviving spouse of a disabled veteran taxpayer who had previously received the disabled veteran real property tax credit authorized by §11-13MM-4 of this code.

(6) "Flow-through entity", "conduit entity", or "pass through entity" means an S Corporation, partnership, limited partnership, limited liability partnership, or limited liability company. The term "flow-through entity", "conduit entity", or "pass through entity" includes a publicly traded partnership as that term is defined in section 7704 of the Internal Revenue Code that has equity securities registered with the Securities and Exchange Commission under section 12 of Title I of the Securities Exchange Act of 1934, 15 U.S.C. § 781: *Provided*, That a publicly traded partnership as defined in section 7704 of the Internal Revenue Code having equity securities registered with the Securities and Exchange Commission under section 12 of Title I of the Securities Exchange Act of 1934, 15 U.S.C. § 781, and any other person or entity that is treated as a C corporation for federal income tax purposes, shall be treated as a corporation taxable under article §11-24-1 *et seq.* of this code for purposes of this article.

(7) "Motor Vehicle" means the following class of vehicles defined in §17A-10-1 of this code: Class A, Class B, Class G, Class H, Class T, Class V, Class X, and all-terrain vehicles and utility terrain vehicles as defined in §20-15-2 of this code.

(8) "Person" means and includes an individual, a trust, estate, partnership, pass through entity, association, company, or corporation.

(9) "Personal property" shall have the same meaning as in §11-5-1 *et seq.* of this code: *Provided:* That, for the purposes of this article, the term "personal property" shall not include a working interest in any oil, natural gas, or natural gas liquid producing property or any property of a public service company.

(10) "Personal property taxes paid" means the aggregate of regular levies, excess levies, and bond levies extended against personal property that are paid during the calendar year and determined after any application of any discount for early payment of taxes. "Personal property taxes paid" does not include any untimely ad valorem property tax paid, or any payment of delinquent ad valorem property tax, or payment of "back tax" ad valorem property taxes, or any penalty or interest for late payment of property taxes.

(11) "Public service company" means a corporation or other business entity which delivers services considered essential to the public interest that are regulated by the applicable federal or state regulatory body, including, but not limited to, businesses furnishing electricity, natural gas, telecommunications, and water, and those transporting personal property or passengers, including, but not limited to, airlines, railroads, trucking, and bus companies, and which are centrally assessed by the state for property tax purposes.

(12) "Real property taxes paid" means the aggregate of regular levies, excess levies, and bond levies that are paid during the calendar year and determined after any application of any discount for early payment of taxes. "Real property taxes paid" does not include any untimely ad valorem property tax paid, or any payment of delinquent ad valorem property tax, or payment of "back tax" ad valorem property taxes, or any penalty or interest for late payment of property taxes.

§11-13MM-4. Disabled veteran and eligible widowed spouse of a disabled veteran real property tax credit.

(a) *Credit allowed.* — A disabled veteran taxpayer or eligible widowed spouse may receive a tax credit against the tax imposed under §11-21-1 *et seq.* of this code in the amount of West Virginia ad valorem property tax timely paid on his or her homestead during the personal income taxable year.

(b) *Amount of credit.* — Any taxpayer meeting the definition of a disabled veteran taxpayer or eligible widowed spouse under this article shall be allowed a refundable credit against the taxes imposed by §11-21-1 *et seq.* of this code equal to the amount of West Virginia ad valorem real property taxes timely paid a county sheriff on a homestead which is used or occupied exclusively for residential purposes, as those terms are defined in §11-6B-2, during the personal income taxable year: *Provided*, That in no case shall any credit be allowed under this article for any untimely real property tax paid, or any payment of delinquent real property tax, or payment of "back tax" real property taxes.

(c) *Application of credit against personal income tax.* — The amount of credit allowed under this section shall be taken against the personal income tax liability, imposed by article §11-21-1 *et seq.* of this code, of the disabled veteran taxpayer or eligible widowed spouse.

(d) *Refundable portion of annual credit allowance.* — If the annual tax credit allowed under this article exceeds the amount of personal income tax subject to offset under this article in any taxable year, the disabled veteran taxpayer or eligible widowed spouse may claim, for that taxable year, the excess amount as a refundable tax credit.

(e) *Termination of tax credit.* — Any tax credit approved in accordance with the provisions of this section shall terminate immediately when any of the following events occur:

(1) The death of the disabled veteran taxpayer for which the tax credit was authorized: *Provided*, That an eligible widowed spouse

may continue to receive the tax credit until his or her death or remarriage;

(2) The sale of the property for which the tax credit was approved; or

(3) A determination by the assessor that the property for which the tax credit was approved no longer qualifies for the tax credit in accordance with the provisions of this section.

(f) *Forms and instructions.* — The Tax Commissioner shall prescribe and supply all necessary instructions and forms for administration of this section.

CHAPTER 240

(H. B. 2165 - By Delegates J. Cannon, Chiarelli, Holstein, Riley, Cooper, Maynor, Hornby, Willis, and Young)

[Passed April 10, 2025; in effect 90 days from passage (July 9, 2025)]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §17C-13-6 of the Code of West Virginia, 1931, as amended, and to amend the Code by adding thereto a new section, designated §17A3-15a, relating to free parking for certain individuals; prohibiting public entities from requiring certain persons with a mobility impairment who are unable to walk from having to pay for accessible parking at parking meters that are inaccessible; defining terms; specifying parameters of prohibition and entitlement for payment exemption; making penalty of false swearing applicable for false certification of inability to access parking meter without unreasonable effort; prohibiting citations; providing for prima facie evidence; providing disabled veterans and veterans who received the Purple Heart may park free at metered parking spaces at any municipality in the state.

Be it enacted by the Legislature of West Virginia:

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

§17A-3-15a. Free parking for disabled veterans and veterans awarded the purple heart.

Notwithstanding any provision of law to the contrary, any person who is a disabled veteran from the United States Armed Forces or who was awarded the Purple Heart, may park at any metered parking space in any municipality in this state without being required to deposit any sum of coins or currency into the

meter: *Provided*, That an appropriate designation must appear on the person's registration plate under the provisions of §17A-3-14 demonstrating that the person is a disabled veteran or was awarded the Purple Heart.

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.

(a)(1) The commissioner may issue up to two special registration plates or removable windshield placards to a person with a mobility impairment or a West Virginia organization which transports persons with disabilities and facilitates the mobility of its customers, patients, students, or persons otherwise placed under its responsibility.

(2) Special registration plates or placards may only be issued for placement on a Class A or Class G motor vehicle registered under the provisions of §17A-3-1 *et seq.* of this code.

(3) The applicant shall specify whether he or she is applying for a special registration plate, a removable windshield placard, or both on the application form prescribed and furnished by the commissioner.

(4) The applicant shall submit, with the application, a certificate issued by any physician, chiropractor, advanced nurse practitioner, or physician's assistant who is licensed in this state, stating that the applicant has a mobility impairment, or that the applicant is an organization which regularly transports a person with a mobility impairment as defined in this section. The physician, chiropractor, advanced nurse practitioner, or physician's assistant shall specify in the certificate whether the disability is temporary or permanent. A disability which is temporary is one expected to last for a limited duration and improve during the

applicant's life. A disability which is permanent is one which is expected to last during the duration of the applicant's life.

(5) Upon receipt of the completed application, the physician's certificate, and the regular registration fee for the applicant's vehicle class, if the commissioner finds that the applicant qualifies for the special registration plate or a removable windshield placard as provided in this section, he or she shall issue to the applicant a special registration plate (upon remittance of the regular registration fee) or a removable windshield placard (red for temporary and blue for permanent), or both. Upon request, the commissioner shall also issue to any otherwise qualified applicant one additional placard having the same expiration date as the applicant's original placard. The placard shall be displayed by hanging it from the interior rearview mirror of the motor vehicle so that it is conspicuously visible from outside the vehicle when parked in a designated accessible parking space. The placard may be removed from the rearview mirror whenever the vehicle is being operated to ensure clear vision and safe driving. Only in the event that there is no suitable rearview mirror in the vehicle may the placard be displayed on the dashboard of the vehicle.

(6) Organizations which transport people with disabilities will be provided with a placard which will permit them to park in a designated area for the length of time necessary to load and unload passengers. These vehicles must be moved to a nondesignated space once the loading or unloading process is complete.

(b) As used in this section, the following terms have the meanings ascribed to them in this subsection:

(1) A person or applicant with a "mobility impairment" means a person who is a citizen of West Virginia and as determined by a physician, allopath or osteopath, chiropractor, advanced nurse practitioner, or physician's assistant licensed to practice in West Virginia:

(A) Cannot walk 200 feet without stopping to rest;

(B) Cannot walk without the use of or assistance from a brace, cane, crutch, prosthetic device, wheelchair, other assistive device, or another person;

(C) Is restricted by lung disease to such an extent that the person's force (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than 60 mm/hg on room air at rest;

(D) Uses portable oxygen;

(E) Has a cardiac condition to such an extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards established by the American Heart Association; or

(F) Is severely limited in his or her ability to walk because of an arthritic, neurological, or other orthopedic condition.

(2) "Special registration plate" means a registration plate that displays the international symbol of access, as adopted by the Rehabilitation International Organization in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled, in a color that contrasts with the background, in letters and numbers the same size as those on the plate, and which may be used in lieu of a regular registration plate;

(3) "Removable windshield placard" (permanent or temporary) means a two-sided, hanger-style placard measuring three inches by nine and one-half inches, with all of the following on each side:

(A) The international symbol of access, measuring at least three inches in height, centered on the placard, in white on a blue background for permanent designations and in white on a red background for temporary designations;

(B) An identification number measuring one inch in height;

(C) An expiration date in numbers measuring one inch in height for a temporary placard; and

(D) The seal or other identifying symbol of the issuing authority.

(4) "Regular registration fee" means the standard registration fee for a vehicle of the same class as the applicant's vehicle;

(5) "Public entity" means state or local government or any department, agency, special purpose district, or other instrumentality of a state or local government;

(6) "Public facility" means all or any part of any buildings, structures, sites, complexes, roads, parking lots, or other real or personal property, including the site where the facility is located;

(7) "Place or places of public accommodation" means a facility or facilities operated by a private entity whose operations affect commerce and fall within at least one of the following categories:

(A) Inns, hotels, motels, and other places of lodging;

(B) Restaurants, bars, or other establishments serving food or drink;

(C) Motion picture houses, theaters, concert halls, stadiums, or other places of exhibition or entertainment;

(D) Auditoriums, convention centers, lecture halls, or other places of public gatherings;

(E) Bakeries, grocery stores, clothing stores, hardware stores, shopping centers, or other sales or rental establishments;

(F) Laundromats, dry cleaners, banks, barber and beauty shops, travel agencies, shoe repair shops, funeral parlors, gas or service stations, offices of accountants and attorneys, pharmacies, insurance offices, offices of professional health care providers, hospitals, or other service establishments;

(G) Terminals, depots, or other stations used for public transportation;

(H) Museums, libraries, galleries, or other places of public display or collection;

(I) Parks, zoos, amusement parks, or other places of recreation;

(J) Public or private nursery, elementary, secondary, undergraduate, or post-graduate schools or other places of learning and day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies, or other social services establishments; and

(K) Gymnasiums, health spas, bowling alleys, golf courses, or other places of exercise or recreation.

(8) "Commercial facility" means a facility whose operations affect commerce and which are intended for nonresidential use by a private entity;

(9) "Accessible parking" formerly known as "handicapped parking" is the present phrase consistent with language within the Americans with Disabilities Act (ADA);

(10) "Parking enforcement personnel" includes any law-enforcement officer as defined by §30-29-1 of this code, and private security guards, parking personnel, and other personnel authorized by a city, county, or the state to issue parking citations.

Any person who falsely or fraudulently obtains or seeks to obtain the special plate or the removable windshield placard provided for in this section, and any person who falsely certifies that a person is mobility impaired in order that an applicant may be issued the special registration plate or windshield placard under this section is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$500. Any person who fabricates, uses, or sells unofficially issued windshield placards to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$500 per placard fabricated, used, or sold. Any person who fabricates, uses, or sells unofficially issued identification cards to any person or

organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$700 per identification card fabricated, used, or sold. Any person who fabricates, uses, or sells unofficially issued labels imprinted with a future expiration date to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$700. Any person covered by this section who sells or gives away their officially issued windshield placard to any person or organization not qualified to apply for or receive the placard and then reapplies for a new placard on the basis it was stolen is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she, or they may otherwise incur, shall lose their right to receive or use a special placard or special license plate for a period of not less than five years.

(c) The commissioner shall set the expiration date for special registration plates on the last day of a given month and year, to be valid for a minimum of one year but not more than five years, after which time a new application must be submitted to the commissioner. After the commissioner receives the new application, signed by a certified physician, chiropractor, advanced nurse practitioner, or physician's assistant if required under this subsection, the commissioner shall issue: (i) A new special registration plate or new permanent or temporary removable windshield placard; or (ii) official labels imprinted with the new expiration date and designed so as to be placed over the old dates on the original registration plate or windshield placard: *Provided*, That a new application under this subsection must not be accompanied by a certificate pursuant to §17C-13-6(a)(4) of this code if a prior application is on file with the commissioner, such application includes a certificate issued pursuant to §17C-13-6(a)(4) of this code, such certificate specifies that the applicant's disability is permanent for life, and such certificate was made within 10 years of the new application.

(d) The commissioner shall set the expiration date of temporary removable windshield placards to be valid for a period of approximately six months after the application was received and approved by the commissioner. Permanent removable windshield placards are valid for the duration of the applicant's life.

(e) The commissioner shall issue to each applicant who is granted a special registration plate or windshield placard an identification card bearing the applicant's name, assigned identification number, and expiration date. The applicant shall thereafter carry this identification card on his or her person whenever parking in an accessible parking space. The identification card shall be identical in design for both registration plates and removable windshield placards.

(f) An accessible parking space should comply with the provisions of the Americans with Disabilities Act accessibility guidelines, contained in 28 C.F.R. 36, Appendix A, Section 4.6. In particular, the parking space should be a minimum of eight feet wide with an adjacent eight-foot access aisle for vans having side mounted hydraulic lifts or ramps, or a five-foot access aisle for standard vehicles. Access aisles should be marked using diagonal two- to four-inch-wide stripes spaced every 12 or 24 inches apart along with the words "no parking" in painted letters which are at least 12 inches in height. All accessible parking spaces must have a signpost in front or adjacent to the accessible parking space displaying the international symbol of access sign mounted at a minimum of eight feet above the pavement or sidewalk and the top of the sign. Lines or markings on the pavement or curbs for parking spaces and access aisles may be in any color, although blue is the generally accepted color for accessible parking.

(g) A vehicle displaying a disabled veterans special registration plate issued pursuant to §17A-3-14(c)(6) of this code shall be recognized and accepted as meeting the requirements of this section.

(h) A vehicle from any other state, United States territory, or foreign country displaying an officially issued special registration plate, placard, or decal bearing the international symbol of access

shall be recognized and accepted as meeting the requirements of this section, regardless of where the plate, placard, or decal is mounted or displayed on the vehicle.

(i) Stopping, standing, or parking places marked with the international symbol of access shall be designated in close proximity to all public entities, including state, county, and municipal buildings and facilities, places of public accommodation, and commercial facilities. These parking places shall be reserved solely for persons with a mobility impairment and disabled veterans at all times.

(j) Any person whose vehicle properly displays a valid, unexpired special registration plate or removable windshield placard may park the vehicle for unlimited periods of time in parking zones unrestricted as to length of parking time permitted: *Provided*, That this privilege does not mean that the vehicle may park in any zone where stopping, standing, or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard. To the extent any provision of any ordinance of any political subdivision of this state is contrary to the provisions of this section, the provisions of this section take precedence and apply.

The parking privileges provided for in this subsection apply only during those times when the vehicle is being used for the loading or unloading of a person with a mobility impairment. Any person who knowingly exercises, or attempts to exercise, these privileges at a time when the vehicle is not being used for the loading or unloading of a person with a mobility impairment is guilty of a misdemeanor and, upon first conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$200; upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$300; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$500.

(k) Any person whose vehicle does not display a valid, special registration plate or removable windshield placard may not stop, stand, or park a motor vehicle in an area designated, zoned, or marked for accessible parking with signs or instructions displaying the international symbol of access, either by itself or with explanatory text. The signs may be mounted on a post or a wall in front of the accessible parking space and instructions may appear on the ground or pavement, but use of both methods is preferred. Accessible parking spaces for vans having an eight-foot adjacent access aisle should be designated as "van accessible" but may be used by any vehicle displaying a valid special registration plate or removable windshield placard.

Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$200; upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$300; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$500.

(l) All signs that designate areas as "accessible parking" or that display the international symbol of access shall also include the words "up to \$500 fine".

(m) No person may stop, stand, or park a motor vehicle in an area designated or marked off as an access aisle adjacent to a van-accessible parking space or regular accessible parking space. Any person, including a driver of a vehicle displaying a valid removable windshield placard or special registration plate, who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$200; upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$300; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$500.

(n) Parking enforcement personnel who otherwise enforce parking violations may issue citations for violations of this section

and shall reference the number on the vehicle's license plate, since the driver normally will not be present.

(o) Law-enforcement agencies may establish a program to use trained volunteers to collect information necessary to issue citations to persons who illegally park in designated accessible parking spaces. Any law-enforcement agency choosing to establish a program shall provide for workers' compensation and liability coverage. The volunteers shall photograph the illegally parked vehicle and complete a form, to be developed by supervising law-enforcement agencies, that includes the vehicle's license plate number, date, time, and location of the illegally parked vehicle. The photographs must show the vehicle in the accessible space and a readable view of the license plate. Within the discretion of the supervising law-enforcement agency, the volunteers may issue citations or the volunteers may submit the photographs of the illegally parked vehicle and the form to the supervising law-enforcement agency, who may issue a citation, which includes the photographs and the form, to the owner of the illegally parked vehicle. Volunteers shall be trained on the requirements for citations for vehicles parked in marked, zoned, or designated accessible parking areas by the supervising law-enforcement agency.

(p) Local authorities who adopt the basic enforcement provisions of this section and issue their own local ordinances shall retain all fines and associated late fees. These revenues shall be used first to fund the provisions of subsection (o) of this section, if adopted by local authorities, or otherwise shall go into the local authorities' General Revenue Fund. Otherwise, any moneys collected as fines shall be collected for and remitted to the state.

(q) The commissioner shall prepare and issue a document to applicants describing the privileges accorded a vehicle having a special registration plate and removable windshield placard as well as the penalties when the vehicle is being inappropriately used as described in this section and shall include the document along with the issued special registration plate or windshield placard. In addition, the commissioner shall issue a separate document informing the general public regarding the new provisions and

increased fines being imposed either by way of newspaper announcements or other appropriate means across the state.

(r) The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code.

(s)(1) A public entity may not require a person to pay for parking a vehicle in an accessible parking space with a parking meter if the following requirements are met:

(A) The vehicle displays a special registration plate or placard that entitles the person to park in an accessible parking space pursuant to this section;

(B) The driver has a mobility impairment and is unable to walk;

(C) The parking meter is not accessible to the driver while sitting in a wheelchair or without traveling more than 30 feet from the parked vehicle; and

(D) The parked vehicle displays an unexpired parking certification that is plainly visible with pertinent information through its windshield. For purposes of this subsection, “parking certification” means a letter completed by a licensed medical provider on the provider’s letterhead that is titled “Parking Certification pursuant to W.Va. Code §17C-13-6(s)” and that certifies that the person is physically able to drive but unable to walk, which means for purposes of this subsection that the person cannot ambulate without the aid of a wheelchair. Such letter shall specify whether the inability to walk is permanent or temporary. If the inability to walk is temporary, the letter shall include the date on which such temporary disability is anticipated to end, and the letter may not be displayed in a windshield after such date.

(2) By displaying a parking certification in the windshield of a vehicle that is parked in an accessible parking space with an expired parking meter, the person is swearing under penalty of false swearing that he or she is unable to access the parking meter without unreasonable effort.

(3) Parking enforcement personnel may not cite a vehicle that is parked in an accessible parking space of a public entity for parking at an expired meter if the requirements of this subsection are met: *Provided*, That if a parking citation is issued, it shall be prima facie evidence that the person was entitled to park in the accessible parking space with an expired meter if the person produces his or her parking certification.

CHAPTER 241

**(Com. Sub. for S. B. 270 - By Senators Martin, Rose, Thorne,
Deeds, Phillips, Rucker, Hart, Bartlett, and Morris)**

[Passed April 9, 2025; in effect 90 days from passage (July 8, 2025)]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend and reenact §15-5-19a of the Code of West Virginia, 1931, as amended, relating to limiting restrictions of firearms owners during certain states of emergency and other like states; declaring the sale, repair, maintenance, and manufacture of firearms, ammunition, and related accessories and components to be essential businesses and services for the purposes of safety and security in times of declared emergency or any other statutorily authorized responses to disaster, war, acts of terrorism, riot or civil disorder, or other emergencies; adding entities engaged in providing firearms safety training, or firearms safety instructor courses, classes, or programs to a list of entities the operation of which may not be restricted by state action in an emergency; limiting restrictions on lawful hunting or fishing activities in an emergency; prohibiting specific governmental regulation of firearms, ammunition, components or accessories of any kind or nature, or their use or possession; extending the expiration date of concealed license during emergencies; providing enumerated exceptions that would permit limited government action in the regulation of firearms in emergencies in certain narrowly tailored factual scenarios; creating an action for damages, injunctive relief, declaratory relief, or other appropriate redress for the unlawful seizure or confiscation of firearms or related accessories and components; and providing for civil damages.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 5. DIVISION OF HOMELAND SECURITY AND
EMERGENCY MANAGEMENT.****§15-5-19a. Possession of firearms during a declared state of
emergency.**

(a) Notwithstanding any other provision of law to the contrary, the transport, storage, transfer, sale, commerce in, import and export of, distribution, repair, maintenance, and manufacture of firearms, ammunition, and related accessories and components, and other goods and services directly related to lawful firearm possession, use, storage, repair, maintenance, and training in the use of firearms, are declared to be "essential" businesses and services for the purposes of safety and security in times of declared emergency or any other statutorily authorized responses to disaster, war, acts of terrorism, riot or civil disorder, or emergencies of whatever kind or nature.

(b) Except as provided in this section, no state agency, political subdivision, or any elected or appointed official or employee thereof, may, under any governmental authority or color of law exercised as part of any statutorily authorized responses to disaster, war, acts of terrorism, riot or civil disorder, or as part of any federal or state declared state of emergency or preparedness of whatever kind or nature:

(1) Prohibit or restrict the otherwise lawful possession, use, carrying, transfer, transportation, storage, sale, display, or other lawful use of a firearm or ammunition, any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or personal weapons other than firearms;

(2) Seize, confiscate, or authorize the seizure or confiscation of any otherwise lawfully possessed firearm or ammunition, any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or otherwise lawful personal weapons other than firearms unless:

(A) The person acting on behalf of or under the authority of the state, a county, or municipality is:

- (i) Defending himself or herself or another from an assault; or
 - (ii) Arresting a person in actual possession of a firearm or ammunition for a violation of law; or
- (B) The firearm or ammunition is being seized or confiscated as evidence of a crime;
- (3) Require registration of any firearm or ammunition, any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or otherwise lawful personal weapons other than firearms;
 - (4) Suspend or revoke a license to carry a concealed deadly weapon or provisional license to carry a concealed deadly weapon issued pursuant to §61-7-1 *et seq.* of this code except as expressly authorized in that article;
 - (5) Willfully refuse to accept an application for a license to carry a concealed deadly weapon or provisional license to carry a concealed deadly weapon, provided the application has been properly completed in accordance with §61-7-1 *et seq.* of this code;
 - (6) Close or limit the operating hours of any entity engaged in the lawful selling or servicing of any firearm, including any component or accessory, ammunition, ammunition reloading equipment and supplies, or personal weapons other than firearms;
 - (7) Close or limit the operating hours of any indoor or outdoor shooting range; or any entity engaged in providing firearms safety training or firearms safety instructor courses, classes, or programs;
 - (8) Place restrictions or quantity limitations on any entity regarding the lawful sale or servicing of any firearm or ammunition, any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or personal weapons other than firearms; or
 - (9) Suspend, restrict, or prohibit otherwise lawful hunting or fishing activities

(c) The prohibitions of §15-5-19a(b)(1) do not prohibit the state or an authorized state or local authority from ordering and enforcing an evacuation or general closure of businesses in the affected area during a declared state of emergency.

(d)(1) If a license to carry a concealed deadly weapon or provisional license to carry a concealed deadly weapon has been issued to a person pursuant to §61-7-4 of this code, and if the date that the valid and subsisting license would or is scheduled to expire falls within the period of emergency declared by the Governor's executive order or the 14 days immediately preceding that declaration, then, notwithstanding the date of scheduled expiration, the duration of that license is automatically extended for a period of 60 days commencing from the date of the license's scheduled expiration or 30 days commencing from the termination of the state of emergency, whichever is later.

(2) If §15-5-19a(d)(1) of this subsection applies with respect to a license to carry a concealed deadly weapon or provisional license to carry a concealed deadly weapon, then during the extension period described in that section that is applicable to that license, all of the following apply:

(A) The license shall be valid for all purposes under the laws of this state and the person to whom the license was issued shall be considered for all purposes under the laws of this state to be the holder of a valid license to carry a concealed handgun;

(B) The license remains subject to the operation of §61-7-1, *et seq.*, of this code during the extended period of the license and at any other time; and

(C) Except for the date of scheduled expiration, all other conditions, and restrictions otherwise applicable to the license and the license holder continue to apply during the extended period of the license and at any other time.

(e) This section shall not apply to the following:

(1) The authority of a chief administrative officer of a political subdivision with police powers to prohibit the sale, offering for

sale, dispensing, or transportation of firearms or other dangerous weapons, ammunition, dynamite, or other dangerous explosives in, to, or from a cordoned-off area when engaged in suppressing a riot or when there is a clear and present danger of a riot as that term is delineated in §15-1D-1 *et. seq.* of this code;

(2) The ability of a law-enforcement officer to remove firearms or ammunition from any person pursuant to other lawful authority: *Provided*, That before releasing the individual, the law-enforcement officer shall return to the individual any seized firearms and ammunition, and components thereof, and any firearms accessories and ammunition-reloading equipment and supplies, unless:

(A) The officer takes the individual into physical custody for engaging in criminal activity or for observation; or

(B) Seizes the items as evidence pursuant to an investigation for the commission of a crime; or

(3) A zoning ordinance that specifies the hours of operation or the geographic areas where the commercial sale of firearms, firearm components, or ammunition for firearms may occur: *Provided*, that the zoning ordinance is consistent with the provisions of §8-12-5a(h)(2) of this code.

(f)(1) Any individual, person, group, or entity adversely affected by a violation of this section, or by any manner of law, ordinance, rule, regulation, resolution, practice, or other action enacted or enforced in violation of the provisions of this section, may seek relief in an action at law or in equity for damages, injunctive relief, declaratory relief, or other appropriate redress against any state agency, county, municipality, or other political subdivision of this state, or against any elected or appointed official or employee of this state, a county, municipality or any other political subdivision of this state, that subjects the individual, or causes the individual, to be subjected, to an action prohibited by this section.

(2) Such suit may be filed:

(A) In the court having jurisdiction over the county in which the aggrieved person resides, or group or entity is located, or in which the violation occurred; or

(B) In the case of an action by the state or any state agency, in the circuit court of Kanawha County.

(g) In addition to any other remedy at law or in equity, an individual who is adversely affected by the seizure or confiscation of any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or otherwise lawful personal weapons other than firearms in violation of this section:

(1) May bring an action for the return of the seized or confiscated property in the circuit court of the county in which that individual resides or in which the seized or confiscated property is located and, except where those weapons have been seized as part of a lawful arrest as provided in §15-5-19a(d)(2), that court shall order the immediate return of the items by the seizing or confiscating governmental office and that office's employed officials; and

(2) That individual shall also be entitled to recover a civil penalty for damages, in the amount of \$5,000 per violation, against any person who violates the seizure or confiscation restrictions in this section.

(3) A prevailing plaintiff in an action brought under §15-5-19a(f) or §15-5-19a(g) is also entitled to recover the following:

(A) Actual damages, including consequential damages;

(B) Court costs and fees; and

(C) Reasonable attorney's fees.

(4) And, any award to a prevailing plaintiff under the provisions of §15-5-19a(f) or §15-5-19a(g) may be awarded regardless of whether the law, ordinance, rule, regulation, resolution, practice, or action or the manner of its enforcement is repealed or rescinded, or, expires after the civil action was filed but prior to a final court determination of the action.

CHAPTER 242

**(Com. Sub. for H. B. 3342 - By Delegates Hanshaw (Mr.
Speaker) and Hornbuckle)
(By Request of the Executive)**

[Passed April 9, 2025; in effect 90 days from passage (July 8, 2025)]
[Approved by the Governor on April 25, 2025.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding a new article, designated §5A-13-1, §5A-13-2, §5A-13-3, §5A-13-4, §5A-13-5, and §5A-13-6, relating to the Firearms Industry Nondiscrimination Act; establishing the short title; defining terms; establishing application of act to certain government contracts; providing an exception; setting forth when certain contracts are void; prohibiting financial institutions from discriminating against a firearm entity or firearm trade association; specifying the applicability of the prohibition; providing civil remedies for a violation by an individual; providing for enforcement by the Attorney General; providing that an enforcement action by the Attorney General does not prohibit a civil action by an individual; creating civil cause of action; requiring the Attorney General to submit names of financial institutions in violation to the Governor and to request that the state terminate any business relationship with the financial institution; providing a statute of limitations for actions; and providing exceptions to the prohibition.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. FIREARMS INDUSTRY NONDISCRIMINATION ACT.

§5A-13-1. Short Title.

This Act shall be known and may be cited as the Firearm Industry Nondiscrimination Act.

§5A-13-2. Definitions.

For purposes of the Firearm Industry Nondiscrimination Act:

(1) "Ammunition" means a loaded cartridge or shot shell, case, primer, projectile, wadding, or propellant powder.

(2) "Contract" means a promise or set of promises constituting an agreement between the parties that gives each a legal duty to the other and the right to seek a remedy for the breach of those duties: *Provided*, That the term does not include an agreement related to investment services.

(3) "Discriminate against a firearm entity or firearm trade association" means, with respect to the entity or association, to:

(A) Refuse to provide or engage in services with the entity or association based on its status as a firearm entity or firearm trade association, which includes the lawful products and services provided by, and the lawful practices of, firearm entities and firearm trade associations;

(B) Refrain from continuing an existing business relationship with the entity or association based on its status as a firearm entity or firearm trade association, which includes the lawful products and services provided by, and the lawful practices of, firearm entities and firearm trade associations; or

(C) Terminate an existing business relationship with the entity or association based on its status as a firearm entity or firearm trade association, which includes the lawful products and services provided by, and the lawful practices of, firearm entities and firearm trade associations;

(D) The term does not include the policies of a vendor, merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories;

(E) The term also does not include a decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local laws, policies, or regulations or a directive by a regulatory agency, or for any traditional business reason that is specific to the customer or potential customer and not based on the status of an entity or association as a firearm entity or firearm trade association, which includes the lawful products and services provided by, and the lawful practices of, firearm entities and firearm trade associations.

(4) "Financial institution" means an entity that does business or have a contract with this state, and is one of the following:

(A) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act;

(B) A commercial bank or trust company;

(C) A credit union; or

(D) An operator of a credit card system.

(5) "Firearm" means any weapon which will expel a projectile by action of an explosion. For purposes of this article, the term "firearm" includes antique firearms, as defined in §61-7-2 of this code.

(6) "Firearm accessories or components" means:

(A) Any device specifically adapted to enable the wearing or carrying about one's person or the storage or mounting in or on any conveyance of a firearm and any attachment or device specifically adapted to be inserted into or affixed onto any firearm to enable, alter, or improve the functioning or capabilities of the firearm;

(B) Any item that is used in conjunction with or mounted upon a firearm, including but not limited to telescopic or laser sights, magazines, flash or sound suppressors, folding or aftermarket stocks and grips, speedloaders, braces, ammunition carriers, and lights for target illumination;

(C) Any component for making ammunition, reloading materials and equipment, machinery, and tools for manufacturing ammunition; and

(D) Detachable firearm magazines.

(7) "Firearm entity" means:

(A) A firearm, firearm accessory, or ammunition manufacturer, distributor, wholesaler, supplier, or retailer; or

(B) A shooting range as defined in §61-6-23 of this code.

(8) "Firearm trade association" means any person, corporation, unincorporated association, federation, business league, or business organization that:

(A) Is not organized or operated for profit and for which none of its net earnings inures to the benefit of any private shareholder or individual;

(B) Has two or more firearm entities as members; and

(C) Is exempt from federal income taxation under section 501(a) of the Internal Revenue Code of 1986, as an organization described by section 501(c) of such code.

(9) "Governmental entity" means:

(A) Any state agency; or

(B) Any political subdivision of this state.

(10) "Sole-source provider" means a supplier who provides services of a unique nature or services that are solely available through the supplier and the supplier is the only practicable source to provide the services.

(11) "State agency" means any agency, board, or commission of this state other than the courts and the Legislature.

§5A-13-3. Application of act to certain contracts.

(a) The Firearm Industry Nondiscrimination Act shall apply to a contract that:

(1) Is between a governmental entity and a financial institution; and

(2) Is entered into on or after the effective date of this act.

(b) Except as provided in §5A-13-4 of this code, a governmental entity may not enter into a contract with any financial institution that discriminates against any firearm entity or firearm trade association.

(c) Any contract to which subsection (a) of this section applies shall contain provisions providing for the termination of the contract within one year of the governmental entity's determination that a violation of the requirements of this section have occurred. The governmental entity shall terminate any business relationship with any financial institution in a commercially reasonable manner within one year of the governmental entity's determination that a violation of the requirements of this section have occurred.

§5A-13-4. Exceptions.

The requirements of §5A-13-3 of this code do not apply if a governmental entity contracts with a sole-source provider.

§5A-13-5. Unlawful discrimination against a firearm entity or firearm trade association; exception.

(a) A financial institution that does business or has a contract with this state may not discriminate against a firearm entity or firearm trade association because the firearm entity or firearm trade association supports or is engaged in the lawful commerce of firearms, firearm accessories, or ammunition products.

(b) This section shall not apply to a financial institution that chooses not to provide services to a firearm entity or firearm trade association for a business or financial reason or due to a directive

by the state banking commissioner or a bank supervisory agency as defined by §31A-8D-2(c) of this code. This section shall also not apply to a financial institution that has a written policy prohibiting the institution from discriminating against firearm entities or firearm trade associations as those terms are defined in §5A-13-2 of this code. For the purposes of this subsection, "business or financial reason" does not include a policy of refusing to provide financial services or otherwise discriminating when providing financial services to a firearm entity.

§5A-13-6. Remedies; attorney general notice; statute of limitations.

(a) A person who is injured by a violation of §5A-13-5 of this code may bring a civil action against the financial institution in his or her own name in the circuit court for the county where the alleged violation occurred. If the injured person prevails on his or her claim, then the court shall award the injured person reasonable attorney fees and costs. The court may further award the prevailing injured person any of the following:

- (1) Actual and compensatory damages;
- (2) Punitive or exemplary damages;
- (3) Injunctive relief; and
- (4) Any other appropriate civil relief.

(b) The Attorney General may file a civil action for a violation of §5A-13-5 of this code: *Provided*, That the authority granted to the Attorney General does not affect the right of a person who is injured by a violation of §5A-13-5 of this code to bring an action for a violation of the rights protected under this article. The Attorney General may request the court to do any of the following:

- (1) Issue a declaratory judgment that an act or practice violates this article;

(2) Enjoin any act or practice that violates this article by issuing a temporary restraining order or preliminary or permanent injunction, without a bond, after providing appropriate notice; and

(c) The Attorney General shall submit the name of any financial institution that has violated this article to the Governor and request that the state terminate any business relationship with the financial institution in a commercially reasonable manner within one year.

(d) Any civil action brought pursuant to this section shall be commenced within not more than two years after the date that the violation is discovered or should reasonably have been discovered.

(e) The remedies and actions available or required under this section shall not be applicable if a financial institution has a written policy prohibiting the institution from discriminating against firearm entities as those terms are defined in §5A-13-2 of this code.



CHAPTER 243

(Com. Sub. for H. B. 2797 - By Delegates Statler and Chiarelli)

[Passed April 12, 2025; in effect 90 days from passage (July 11, 2025)]

[Approved by the Governor on April 28, 2025.]

AN ACT to amend and reenact §23-4-1f of the Code of West Virginia, 1931, as amended, relating to who may diagnose post-traumatic stress disorder for a first responder; adding certified nurse practitioners and certified physician assistants to list of professionals; providing requirements for such; and removing sunset clause.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

***§23-4-1f. Certain psychiatric injuries and diseases not compensable; definitions; legislative findings; terms; report required.**

(a) Except as provided by this section, for the purposes of this chapter, no alleged injury or disease may be recognized as a compensable injury or disease which was solely caused by nonphysical means and which did not result in any physical injury or disease to the person claiming benefits. Except as otherwise provided in this section, it is the purpose of this section to clarify that so-called mental-mental claims are not compensable under this chapter.

(b) For the purposes of this section:

***Note:** This section was also amended by H. B. 2797 (Chapter 243), which passed subsequent to this Act.

(1) "First responder" means a law enforcement officer, firefighter, emergency medical technician, paramedic, and emergency dispatcher;

(2) "Post-traumatic stress disorder" means a disorder that meets the diagnostic criteria for post-traumatic stress disorder specified by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, fifth edition, or a later edition as adopted by rule of the insurance commissioner; and

(3) "Licensed mental health provider" means a licensed psychiatrist, licensed psychologist, licensed professional counselor, licensed marriage and family therapist, certified mental health nurse practitioner, certified psychiatric physician assistant, or licensed social worker who:

(A) Holds a master's degree or higher;

(B) Holds a terminal license within their profession; and

(C) Is qualified to treat post-traumatic stress disorder.

(4) "Employer" means any entity that controls, consistent with the provisions of West Virginia law relating to an employment relationship, the paid or volunteer employment of a first responder eligible for benefits under this section.

(c) The Legislature finds that post-traumatic stress disorder is a unique medical condition. Although it may manifest itself as a psychiatric condition that would be otherwise precluded from workers' compensation coverage, post-traumatic stress disorder is an occupational hazard for first responders, similar to members of the military serving in combat. The Legislature further finds that because first responders are required to expose themselves to traumatic events during the course of their employment and thus are at a recognized higher risk of developing post-traumatic stress disorder, and because of the severe nature and debilitating effects of post-traumatic stress disorder, it is the moral obligation of the state to permit coverage to this class of individuals for their work-related disease.

(d)(1) Post-traumatic stress disorder suffered by a first responder may be recognized as a compensable occupational disease under §23-4-1(f) of this code when:

(A) The employer has elected to provide coverage for post-traumatic stress disorder as an occupational disease; and

(B) A diagnosis has been made by a licensed psychiatrist, certified mental health nurse practitioner, or certified psychiatric physician assistant that the first responder suffered from post-traumatic stress disorder due to exposure to an event or events that occurred in the course of and resulting from the first responder's paid or volunteer covered employment: *Provided*, That the provisions of this section shall apply only to a post-traumatic stress disorder diagnosis made on or after July 1, 2021, or the first day of the employer's next workers' compensation insurance policy or self-insurance program term for which post-traumatic stress disorder coverage has been purchased or elected, whichever is later.

(2) While the diagnosis must be made by a licensed psychiatrist, certified mental health nurse practitioner, or certified psychiatric physician assistant, mental health treatment consistent for a post-traumatic stress disorder diagnosis may be offered by a licensed mental health provider other than the diagnosing psychiatrist, certified mental health nurse practitioner, or certified psychiatric physician assistant.

(3) A diagnosis of post-traumatic stress disorder under this section may not include consideration of any layoff, termination, disciplinary action, or any similar personnel-related action taken in good faith by an employer.

(4) Benefits for a post-traumatic stress disorder diagnosis made under this section are contingent upon the employer electing to provide coverage for post-traumatic stress disorder from its workers' compensation insurance carrier or to provide for it through its self-insurance program, whichever is applicable.

(5) The receipt of benefits is contingent on a claim being made within three years from and after a licensed psychiatrist, certified mental health nurse practitioner, or certified psychiatric physician assistant has made the claimant aware of a post-traumatic stress disorder diagnosis in accordance with this section.

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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The first column gives the number of the bill and the second column gives the chapter assigned to it.

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1 231	449 85	652 88
8 46	456 202	677 217
10 9	458 194	710 204
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35 156	462 195	715 200
50 103	464 176	716 201
75 220	474 151	734 56
102 210	485 126	736 174
128 69	486 104	738 129
138 157	487 105	746 89
154 83	490 106	747 43
196 74	492 107	765 90
198 80	496 196	794 233
199 47	500 127	800 153
225 158	522 7	810 205
240 75	525 8	823 114
257 45	526 197	825 145
267 183	537 203	828 63
270 241	538 223	833 191
275 211	561 40	837 130
280 84	565 198	844 10
282 212	573 232	856 131
283 144	576 221	861 132
291 192	581 86	862 57
299 48	586 108	863 133
325 163	587 128	876 225
336 164	615 224	883 180
358 165	617 207	907 82
369 166	621 70	912 91
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		942 182

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The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2025

House Bills = 4 Digits

Senate Bills = 1-3 Digits

Chapter..... Bill No.	Chapter Bill No.	Chapter Bill No.
1.....3272	31.....3369	61 3440
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3.....2897	33.....3371	63 828
4.....2942	34.....3372	64 3424
5.....2943	35.....3373	65 3456
6.....3030	36.....3522	66 459
7.....522	37.....2026	67 2479
8.....525	38.....3187	68 2484
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29.....3367	59.....2516	89 746
30.....3368	60.....2711	90 765

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the
second column gives the bill number.

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