

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2019

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SPEAKER OF THE HOUSE

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FOREWORD

These volumes contain the Acts of the First Regular Session of the 84th Legislature, 2019. In addition, this forward includes a summary of bills and resolutions introduced during the Second Extraordinary Session of the 83rd Legislature, 2018.

First Regular Session, 2019

The First Regular Session of the 84th Legislature convened on January 9, 2019. The Constitutional sixty-day limit on the duration of the session was March 9, 2019. The Governor issued a proclamation on March 6, 2019, extending the session for a period not to exceed one day for the purpose of considering the Budget Bill. The House of Delegates adjourned *sine die* at 11:55 p.m. on March 9, 2019 and the session ended when the Senate adjourned *sine die* at 12:03 a.m. on March 10, 2019.

Bills totaling 1,823 were introduced in the two houses during the session (1,142 House and 681 Senate). The Legislature passed 294 bills, 139 House and 155 Senate.

The Governor vetoed 30 bills (**Com. Sub. for H. B. 2079**, Removing certain limitations on medical cannabis grower, processor and dispensary licenses; **Com. Sub. for H. B. 2363**, Relating to the Upper Kanawha Valley Resiliency and Revitalization Program; **H. B. 2412**, Relating to criminal acts concerning government procurement of commodities and services; **Com. Sub. for H. B. 2486**, Using records of criminal conviction to disqualify a person from receiving a license for a profession or occupation; **Com. Sub. for H. B. 2503**, Relating to court actions; **H. B. 2530**, Creating a voluntary certification for recovery residences; **Com. Sub. for H. B. 2531**, Permitting trained nurses to provide mental health services in a medication-assisted treatment program; **Com. Sub. for H. B. 2579**, Relating to the collection of tax and the priority of distribution of an estate or property in receivership; **Com. Sub. for H. B. 2661**, Relating to natural gas utilities; **Com. Sub. for H. B. 2673**, Creating the Oil and Gas Abandoned Well Plugging Fund; **Com. Sub. for H. B. 2674**, Creating a student loan repayment program for a mental

health provider; **Com. Sub. for H. B. 2703**, Relating to refunds of excise taxes collected from dealers of petroleum products; **Com. Sub. for H. B. 2734**, Relating to reduced rates for low-income residential customers of privately owned sewer and combined water and sewer utilities; **Com. Sub. for H. B. 2807**, Creating an additional modification to the West Virginia adjusted gross income of shareholders of S corporations engaged in banking; **H. B. 2828**, Relating to Qualified Opportunity Zones; **Com. Sub. for H. B. 2933**, Modifying the criminal penalties imposed on a parent, guardian or custodian for child abuse resulting in injury; **H. B. 2992**, Relating to governmental websites; **Com. Sub. for H. B. 3024**, West Virginia Business Ready Sites Program; **H. B. 3044**, Requiring the Commissioner of Highways to develop a formula for allocating road funds; **H. B. 3148**, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Human Services; **Com. Sub. for S. B. 61**, Adding certain crimes for which prosecutor may apply for court order authorizing interception of communications; **Com. Sub. for S. B. 147**, Shifting funding from Landfill Closure Assistance Fund to local solid waste authorities; **S. B. 190**, DOH promulgate legislative rule relating to employment procedures; **S. B. 272**, Updating code relating to Commission on Special Investigations; **S. B. 440**, Relating to Antihazing Law; **Com. Sub. for S. B. 487**, Relating to admissibility of health care staffing requirements in litigation; **Com. Sub. for S. B. 522**, Creating Special Road Repair Fund; **Com. Sub. for S. B. 624**, Allowing county boards of education use alternative assessment provided in Every Student Succeeds Act; **S. B. 633**, Authorizing Board of Physical Therapy conduct criminal background checks on applicants for licenses; and **S. B. 676**, Relating to off-road vehicle recreation.) Of the vetoed bills, the Legislature amended and again passed **Com. Sub. for S. B. 61**, Adding certain crimes for which prosecutor may apply for court order authorizing interception of communications; and **S. B. 272**, Updating code relating to Commission on Special Investigations.

One bill became law without the Governor's signature (**H. B. 2934**, West Virginia Lottery Interactive Wagering Act), leaving

a net total of 266 bills, 119 House and 147 Senate, which became law.

There were 174 Concurrent Resolutions introduced during the session, 109 House and 65 Senate, of which 48 House and 23 Senate were adopted. Twenty-nine House Joint Resolutions and 11 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution, none of which were adopted. The House introduced 22 House Resolutions and the Senate introduced 80 Senate Resolutions, of which 11 House and 76 Senate were adopted.

Second Extraordinary Session, 2018

The Proclamation calling the Legislature into Extraordinary Session on June 25, 2018, contained 2 items for consideration.

The Legislature introduced 2 bills during the Extraordinary Session (1 House and 1 Senate). The Legislature did not pass either of the 2 bills.

There was 1 Senate Concurrent Resolution introduced and adopted, **S. C. R. 201**, Authorizing adjournments of Senate and House of Delegates. One Senate Joint Resolution was introduced which was not adopted. The House introduced 5 House Resolutions, and the Senate introduced 6 Senate Resolutions, of which 3 House and 5 Senate were adopted.

The House adjourned *sine die* on August 29, 2018, and the Senate adjourned *sine die*, ending the Second Extraordinary Session, on December 10, 2018.

STEPHEN J. HARRISON

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

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2019

OFFICERS

Speaker: Roger Hanshaw - Wallback

Clerk: Stephen J. Harrison - Cross Lanes

Sergeant-at-Arms: Anne Lieberman¹ - Charleston

Doorkeeper: Robert Stewart - Cross Lanes

Name	District	City	Occupation	Term
Anderson, Bill (R)	8th	Williamstown	Educator	71st - 84th
Angelucci, Michael (D)	50th	Farmington	Administrator	84th
Atkinson III, Martin "Rick" (R)	11th	Reedy	Director of Sales	82nd - 84th
Azinger, Tom (R)	10th	Vienna	Retired Insurance Agent	72nd - 81st; 84th
Barrett, Jason (D)	61st	Martinsburg	Restaurant owner	81st; 83rd - 84th
Bates, Mick (D)	30th	Beckley	Physical therapist/Small Business Owner	82nd - 84th
Bibby, Tom (R)	62nd	Falling Waters	Retired, U.S. Air Force	84th
Boggs, Brent (D)	34th	Gassaway	Railroad Engineer	73rd - 84th
Brown, Nathan (D)	20th	Williamson	Attorney	84th
Brown, Sammi (D)	65th	Charles Town	Community Organizer/Consultant	84th
Butler, Jim (R)	14th	Henderson	Excavating Contractor	81st - 84th
Byrd, Andrew (D)	35th	South Charleston	Attorney/Small Business Owner	82nd - 84th
Cadle, Scott (R)	13th	Letart	Trucking/Excavating	81st - 82nd; 84th
Campbell, Jeff (D)	42nd	Lewisburg	Teacher/Broadcaster	Appt. Oct. 30, 2017, 83rd; 84th
Canestraro, Joe (D)	4th	Benwood	Lawyer	83rd - 84th
Capito, Moore (R)	35th	Charleston	Attorney	83rd - 84th
Caputo, Mike (D)	50th	Rivesville	UMWA, District 31 Vice President	73rd - 84th
Cooper, Roy (R)	28th	Wayside	Retired U.S. Navy	81st - 84th
Cowles, Daryl (R)	58th	Berkeley Springs	Businessman	78th - 84th
Criss, Vernon (R)	10th	Parkersburg	Executive	69th; 83rd - 84th
Dean, Mark (R)	21st	Verner	Principal	83rd - 84th
Diserio, Phillip W. (D)	2nd	Follansbee	Retired Electrician	81st; 83rd - 84th
Doyle, John (D)	67th	Shepherdstown	Realtor	66th; 71st - 80th; 84th
Ellington, Joe (R)	27th	Princeton	Physician	80th - 84th
Espinosa, Paul (R)	66th	Charles Town	General Manager, Telecommunications	81st - 84th
Estep-Burton, Amanda	36th	South Charleston	Banker	84th
Evans, Ed (D)	26th	Welch	Retired Science Teacher	83rd - 84th
Fast, Tom (R)	32nd	Fayetteville	Attorney	82nd - 84th
Fleischauer, Barbara Evans (D)	51st	Morgantown	Attorney/Small Business Owner	72nd - 76th; 78th - 84th
Fluharty, Shawn (D)	3rd	Wheeling	Attorney	82nd - 84th
Foster, Geoff (R)	15th	Winfield	Construction Supply	82nd - 84th
Graves, Dianna (R)	38th	Cross Lanes	Auditor	Appt. Sept. 19, 2017, 83rd; 84th
Hamrick, Danny (R)	48th	Lost Creek	Consulting, Media Production	81st - 84th
Hanna, Caleb (R)	44th	Richwood	Full-time student	84th
Hansen, Evan (D)	51st	Morgantown	President, Downstream Strategies	84th
Hanshaw, Roger (R)	33rd	Wallback	Attorney	82nd - 84th
Hardy, John (R)	63rd	Shepherdstown	Businessman	84th
Harshbarger, Jason (R)	7th	Pullman	Natural Gas Storage Project Management	83rd - 84th
Hartman, William G. (D)	43rd	Elkins	Retired Independent Insurance Agent	76th - 84th
Hicks, Kenneth P. (D)	19th	Kenova	Attorney	82nd - 84th
Higginbotham, Joshua (R)	13th	Poca	Author	83rd - 84th
Hill, Jordan C. (R)	41st	Summersville	Human Resources	82nd - 84th
Hornbuckle, Sean (D)	16th	Huntington	Financial Services Broker	82nd - 84th
Hot II, John Paul (R)	54th	Petersburg	Insurance/Disposal Service	84th
Hollen, Ray (R)	9th	Elizabeth	Retired USCG, Retired WV State Police	83rd - 84th
Householder, Eric L. (R)	64th	Martinsburg	Small Business Owner	80th - 84th
Howell, Gary G. (R)	56th	Keyser	Small Business Owner	80th - 84th
Jeffries, Dean (R)	40th	Elkview	Insurance Agent	Appt. Sept. 5, 2018, 83rd; 84th
Jeffries, Joe (R)	22nd	Culloden	Maintenance Manager	84th
Jennings, D. "Buck" Rolland (R)	53rd	Thornton	Self-Employed	Appt. Oct. 10, 2017, 83rd; 84th
Kelly, David (R)	6th	Sistersville	Pastor	84th
Kelly, John R. (R)	10th	Parkersburg	Retired, Chemical Industry	82nd - 84th
Kessinger, Kayla (R)	32nd	Mount Hope	Director of Human Resources	82nd - 84th

MEMBERS OF THE HOUSE OF DELEGATES - Continued

Kump, Larry D. (R)	59th	Falling Waters	Retired Public Administrator	80th - 81st; 84th
Lavender-Bowe, Cindy (D)	42nd	Lewisburg	Small Business Owner	84th
Linville, Daniel (R)	16th	Milton	Information Technology Director	Appt. Aug. 1, 2018, 83rd; 84th
Longstreth, Linda (D)	50th	Fairmont	Administrator	77th - 84th
Lovejoy, Chad (D)	17th	Huntington	Attorney	83rd - 84th
Malcolm, Sharon Lewis (R)	39th	Charleston	Retired State Employee	Appt. Mar. 22, 2018, 83rd; 84th
Mandt, John F. (R)	16th	Huntington	Businessman	84th
Martin, Carl "Robbie" (R)	45th	Buckhannon	Business Owner	84th
Martin, Patrick S. (R)	46th	Weston	Business Owner	83rd - 84th
Maynard, Zack (R)	22nd	Harts	Self Employed	83rd - 84th
McGeehan, Pat (R)	1st	Chester	Business Sales/Author	79th; 82nd - 84th
Miley, Timothy (D)	48th	Bridgeport	Attorney	77th - 84th
Miller, Rodney (D)	23rd	Madison	Retired Sheriff/Executive Director Sheriff's Assn.	83rd - 84th
Nelson, Eric Jr. (R)	35th	Charleston	Businessman	80th - 84th
Pack, Jeffrey (R)	28th	Cool Ridge	Pest Control Technician	Appt. Jan. 10, 2018, 83rd; 84th
Paynter, Tony (R)	25th	Hanover	Truck Driver	83rd - 84th
Pethel, Dave (D)	5th	Hundred	Educator	69th - 71st; 74th - 84th
Phillips, Chris (R)	47th	Buckhannon	President, CGP Foods, Inc.	84th
Porterfield, Eric (R)	27th	Princeton	Evangelist / Missionary	84th
Pushkin, Mike (D)	37th	Charleston	Taxi Driver/Musician	82nd - 84th
Pyles, Rodney A. (D)	51st	Morgantown	Retired	83rd - 84th
Queen, Ben (R)	48th	Bridgeport	Media Entrepreneur/Photography	83rd - 84th
Robinson, Andrew (D)	36th	Charleston	Real Estate Appraiser/Broker	83rd - 84th
Rodighiero, Ralph (D)	24th	Logan	UPS Driver	78th - 80th; 82nd - 84th
Rohrbach, Matthew (R)	17th	Huntington	Physician	82nd - 84th
Rowan, Ruth (R)	57th	Points	Retired Educator	77th - 84th
Rowe, Larry L. (D)	36th	Charleston	Attorney	73rd - 74th (House); 75th - 76th (Senate); 82nd - 84th (House)
Shott, John (R)	27th	Bluefield	Attorney	79th (Resigned and Appt. to Senate May, 2010); 81st - 84th (House)
Skaff, Doug Jr. (D)	35th	South Charleston	Business Owner/Commercial Developer	79th-81st; 84th
Sponaugle, Isaac (D)	55th	Franklin	Attorney	81st - 84th
Staggers, Margaret Anne (D)	32nd	Fayetteville	Emergency Physician/Paramedic	79th-81st; 84th
Steele, Brandon (R)	29th	Beckley	Attorney	84th
Storch, Erika (R)	3rd	Wheeling	Financial Officer	80th - 84th
Summers, Amy (R)	49th	Flemington	Registered Nurse	82nd - 84th
Swartzmiller, Randy (D)	1st	Chester	Regulatory Compliance Management	75th - 81st; 84th
Sypok, Terri Funk (R)	52nd	Kingwood	Assessor	83rd - 84th
Thompson, Cody H. (D)	43rd	Elkins	Educator	84th
Thompson, Robert (D)	19th	Wayne	Teacher	83rd - 84th
Tomblin, Tim (D)	24th	Logan	Self-Employed	84th
Toney, Christopher Wayne (R)	31st	Beckley	School Bus Operator	84th
Walker, Danielle (D)	51st	Morgantown	Direct Care Worker	84th
Waxman, Terry (R)	48th	Bridgeport	Homemaker	82nd; 84th
Westfall, Steve (R)	12th	Ripley	Insurance Agent	81st - 84th
Williams, John (D)	51st	Morgantown	Insurance Sales	83rd - 84th
Wilson, S. Marshall (R)	60th	Gerrardstown	Author/Army Officer	83rd - 84th
Worell, Evan (R)	18th	Barboursville	Healthcare Data Analytics	84th
Zukoff, Lisa (D)	4th	Moundsville	Business Owner	84th

¹Anne Lieberman resigned as Sergeant-at-Arms on March 1, 2019.

MEMBERS OF THE SENATE

REGULAR SESSION, 2019

OFFICERS

President: Mitch Carmichael - Ripley

Clerk: Bruce Lee Cassis, Jr. - Charleston

Sergeant-at-Arms: Joseph Allen Freedman - Charleston

Doorkeeper: Jeffrey L. Branham - Cross Lanes

<u>Name</u>	<u>District</u>	<u>City</u>	<u>Occupation</u>	<u>Term</u>
Azinger, Michael T. (R)	3rd	Vienna	Manager	82nd (House); 83rd - 84th
Baldwin, Stephen (D)	10th	Ronceverte	Minister	83rd (House); Appt. Oct. 16, 2017, 83rd; 84th
Beach, Robert D. (D)	13th	Morgantown		Appt. May, 1998, 73rd (House); 75th - 79th (House); 80th - 84th
Blair, Craig (R)	15th	Martinsburg	Businessman	76th - 79th (House); 81st - 84th
Boley, Donna J. (R)	3rd	St. Marys	Retired	Appt. May 14, 1985, 67th; 68th - 84th
Boso, Gregory L. (R)	11th	Summersville	Civil Engineer	82nd - 84th
Carmichael, Mitch (R)	4th	Ripley	Sales Director	75th - 80th (House); 81st - 84th
Clements, Charles H. (R)	2nd	New Martinsville	Retired	77th (House); Appt. Jan. 2017, 83rd; 84th
Cline, Sue (R)	9th	Brenton	Real Estate Agent	Appt. Jan. 2016, 82nd; 83rd - 84th
Facemire, Douglas E. (D)	12th	Sutton	Owner, Grocery Chain	79th - 84th
Hamilton, Bill (R)	11th	Upshur	Retired	76th-83rd (House); 84th
¹ Hardesty, Paul (D)	7th	Holden	Businessman	Appt. Jan. 17, 2019, 84th
Ihlenfeld, William (D)	1st	Wheeling	U.S. Attorney	84th
Jeffries, Glenn D. (D)	8th	Red House	Businessman	83rd - 84th
Lindsay, Richard D. (D)	8th	Charleston	Attorney	84th
Mann, Kenny (R)	10th	Greenville	Funeral Director	83rd - 84th
Maroney, Michael J. (R)	2nd	Glen Dale	Physician	83rd - 84th
Maynard, Mark R. (R)	6th	Genoa	Automobile Dealer	82nd - 84th
Palumbo, Corey (D)	17th	Charleston	Attorney	79th - 78th (House); 79th - 84th
Plymale, Robert H. (D)	5th	Huntington	Businessman	71st - 84th
Prezioso, Roman W. Jr. (D)	13th	Fairmont	Administrator	69th - 73rd (House); 73rd - 84th
Roberts, Rollan (R)	9th	Raleigh	Minister	84th
Romano, Michael J. (D)	12th	Clarksburg	Attorney / CPA	82nd - 84th
Rucker, Patricia Puertas (R)	16th	Harpers Ferry	Home Schooling Mother	83rd - 84th
Smith, Randy E. (R)	14th	Davis	Coal Miner	81st - 82nd (House); 83rd - 84th
Stollings, Ron D. (D)	7th	Madison	Physician	78th - 84th
Swope, Chandler (R)	6th	Mercer	Retired	83rd - 84th
Sypolt, Dave (R)	14th	Kingwood	Professional Land Surveyor	78th - 84th
Takubo, Tom (R)	17th	Charleston	Physician	82nd - 84th
Tarr, Eric J. (R)	4th	Putnam		84th
Trump IV, Charles S. (R)	15th	Berkeley Springs	Attorney	71st - 77th (House); 82nd - 84th
Unger II, John R. (D)	16th	Martinsburg	Businessman/Economic Development	74th - 84th
Weld, Ryan W. (R)	1st	Wellsburg	Attorney	82nd (House); 83rd - 84th
Woelfel, Michael A. (D)	5th	Huntington	Lawyer	82nd - 84th

¹Appointed January 17, 2019, to fill the vacancy created by the resignation of Richard Ojeda, who resigned January 14, 2019.

HOUSE OF DELEGATES COMMITTEES

COMMITTEES OF THE HOUSE OF DELEGATES

Regular Session, 2019

(As of January 9, 2019)

STANDING

AGRICULTURE AND NATURAL RESOURCES

Cooper (*Chair, Agriculture*), Harshbarger (*Chair, Natural Resources*), Cadle (*Vice Chair, Agriculture*), Atkinson (*Vice Chair, Natural Resources*), Hartman (*Minority Chair, Agriculture*), Tomblin (*Minority Chair, Natural Resources*), R. Thompson (*Minority Vice Chair, Agriculture*), Hansen (*Minority Vice Chair, Natural Resources*), Anderson, Dean, Hott, J. Jeffries, D. Kelly, Linville, Paynter, Phillips, Sypolt, Westfall, Wilson, Campbell, Lavender-Bowe, Rodighiero, Sponaugle, Swartzmiller and Zukoff.

BANKING AND INSURANCE

Nelson (*Chair, Banking*), Westfall (*Chair, Insurance*), Criss (*Vice Chair, Banking*), Azinger (*Vice Chair, Insurance*), Estep-Burton (*Minority Chair, Banking*), Williams (*Minority Chair, Insurance*), Lovejoy (*Minority Vice Chair, Banking*), N. Brown (*Minority Vice Chair, Insurance*), Capito, Espinosa, Graves, Hott, Householder, D. Jeffries, P. Martin, McGeehan, Porterfield, Shott, Waxman, Barrett, Bates, Hartman, Robinson, Rowe and Sponaugle.

EDUCATION

Hamrick (*Chair*), Dean (*Vice Chair*), Hornbuckle (*Minority Chair*), Doyle (*Minority Vice Chair*), Atkinson, Bibby, Butler, Cooper, Hanna, Higginbotham, Jennings, J. Kelly, P. Martin, Rohrbach, Toney, Waxman, Westfall, Campbell, Estep-Burton, Evans, Lavender-Bowe, Rodighiero, C. Thompson, R. Thompson and Zukoff.

ENERGY

Anderson (*Chair*), J. Kelly (*Vice Chair*), Evans (*Minority Chair*), Pethtel (*Minority Vice Chair*), Azinger, Cadle, Harshbarger, Higginbotham, Hott, J.

HOUSE OF DELEGATES COMMITTEES

Jeffries, Kessinger, P. Martin, Maynard, Nelson, Paynter, Phillips, Porterfield, Boggs, Caputo, Diserio, Hansen, Hartman, Hicks, Miley and Tomblin.

ENROLLED BILLS

Capito (*Chair*), Atkinson (*Vice Chair*), Westfall, Byrd and Pushkin.

FINANCE

Householder (*Chair*), Criss (*Vice Chair*), Bates (*Minority Chair*), Barrett (*Minority Vice Chair*), Anderson, Butler, Cowles, Ellington, Espinosa, Graves, Hardy, Hill, Linville, Maynard, Rowan, Storch, Westfall, Boggs, Hartman, Longstreth, Pethtel, Rowe, Skaff, Sponaugle and Williams.

FIRE DEPARTMENTS AND EMERGENCY MEDICAL SERVICES

Maynard (*Chair*), Jennings (*Vice Chair*), Angelucci (*Minority Chair*), Campbell (*Minority Vice Chair*), J. Jeffries, Pack, Paynter, Sypolt, Worrell, Lovejoy and Miller.

GOVERNMENT ORGANIZATION

Howell (*Chair*), Pack (*Vice Chair*), Pyles (*Minority Chair*), Diserio (*Minority Vice Chair*), Azinger, Bibby, Cadle, Hott, D. Jeffries, J. Jeffries, R. Martin, Nelson, Paynter, Phillips, Porterfield, Sypolt, Worrell, Angelucci, Caputo, Hansen, Hicks, Staggers, Swartzmiller, Tomblin and Walker.

HEALTH AND HUMAN RESOURCES

Ellington (*Chair*), Hill (*Vice Chair*), Pushkin (*Minority Chair*), Staggers (*Minority Vice Chair*), Atkinson, Butler, Criss, Dean, Hollen, D. Jeffries, Pack, Queen, Rohrbach, Rowan, Summers, Wilson, Worrell, Angelucci, Bates, Estep-Burton, Fleischauer, Lavender-Bowe, Robinson, C. Thompson and Walker.

HOUSE OF DELEGATES COMMITTEES

INDUSTRY AND LABOR

Fast (*Chair*), P. Martin (*Vice Chair*), Miller (*Minority Chair*), Hicks (*Minority Vice Chair*), Dean, Foster, Hanna, Harshbarger, Hill, Householder, D. Jeffries, Jennings, Kump, Malcolm, Porterfield, Shott, Worrell, N. Brown, S. Brown, Caputo, Diserio, Fluharty, Pushkin, Skaff and C. Thompson.

INTERSTATE COOPERATION

Storch (*Chair*), Waxman (*Vice Chair*), Bibby, Ellington, Estep-Burton, Fleischauer and Lovejoy.

JUDICIARY

Shott (*Chair*), Capito (*Vice Chair*), Fleischauer (*Minority Chair*), Fluharty (*Minority Vice Chair*), Fast, Foster, Harshbarger, Hollen, D. Kelly, Kessinger, Kump, Malcolm, Mandt, McGeehan, Queen, Steele, Wilson, N. Brown, S. Brown, Byrd, Canestraro, Lovejoy, Miller, Pushkin and Robinson.

PENSIONS AND RETIREMENT

Hollen (*Chair*), Graves (*Vice Chair*), Pethtel (*Minority Chair*), Evans (*Minority Vice Chair*), Malcolm and Pack.

POLITICAL SUBDIVISIONS

Storch (*Chair*), Cowles (*Vice Chair*), Robinson (*Minority Chair*), S. Brown (*Minority Vice Chair*), Anderson, Azinger, Capito, Dean, Fast, Foster, Graves, Hamrick, Jennings, J. Kelly, R. Martin, Phillips, Wilson, Barrett, Canestraro, Doyle, Longstreth, Miller, Pyles, Walker and Williams.

PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

Rohrbach (*Chair*), Hollen (*Vice Chair*), Robinson (*Minority Chair*), Walker (*Minority Vice Chair*), Ellington, Hanna, D. Kelly, Kessinger, Mandt, Hornbuckle and Puskin.

HOUSE OF DELEGATES COMMITTEES

RULE-MAKING REVIEW

Foster (*Chair*), Bulter (*Vice Chair*), P. Martin, Steele, Fleischauer and Rowe.

RULES

Hanshaw (*Chair*), Summers (*Vice Chair*), Anderson, Cowles, Ellington, Espinosa, Foster, Hamrick, Householder, Howell, Kessinger, Shott, Barrett, Bates, Caputo, Fleischauer, Miley, Miller, Pethtel and Sponaugle.

SENIOR, CHILDREN, AND FAMILY ISSUES

Rowan (*Chair*), Rohrbach (*Vice Chair*), Boggs (*Minority Chair*), Rodighiero (*Minority Vice Chair*), Graves, Hanna, J. Kelly, Kessinger, Linville, Malcolm, Mandt, P. Martin, R. Martin, Maynard, Queen, Sypolt, Toney, Canestraro, Estep-Burton, Fluharty, Longstreth, Lovejoy, Pethtel, Pyles and Williams.

SMALL BUSINESS, ENTREPRENEURSHIP & ECONOMIC DEVELOPMENT

Higginbotham (*Chair*), Queen (*Vice Chair*), Skaff (*Minority Chair*), Lavender-Bowe (*Minority Vice Chair*), Atkinson, Cowles, Ellington, Hardy, Hill, Mandt, R. Martin, Nelson, Phillips, Steele, Toney, Waxman, Westfall, Byrd, Doyle, Hartman, Hicks, Hornbuckle, Miley, R.Thompson and Tomblin.

TECHNOLOGY AND INFRASTRUCTURE

Butler (*Chair*), Linville (*Vice Chair*), Rowe (*Minority Chair*), C. Thompson (*Minority Vice Chair*), Cadle, Capito, Criss, Espinosa, Fast, Hamrick, Hardy, Howell, Kump, Maynard, Paynter, Rohrbach, Storch, Angelucci, Boggs, Diserio, Evans, Hansen, Staggers, Walker and Zukoff.

HOUSE OF DELEGATES COMMITTEES

VETERANS' AFFAIRS & HOMELAND SECURITY

McGeehan (*Chair, Veterans' Affairs*), Jennings (*Chair, Homeland Security*), Butler (*Vice Chair, Veterans' Affairs*), Paynter (*Vice Chair, Homeland Security*), Longstreth (*Minority Chair, Veterans' Affairs*), Canestraro (*Minority Chair, Homeland Security*), Byrd (*Minority Vice Chair, Veterans' Affairs*), Swartzmiller (*Minority Vice Chair, Homeland Security*), Bibby, Cooper, Higginbotham, Hollen, D. Kelly, J. Kelly, Pack, Rowan, Steele, Sypolt, Worrell, Angelucci, Campbell, Fleischauer, Pethel, Pushkin and Staggers.

SENATE COMMITTEES

COMMITTEES OF THE SENATE

Regular Session, 2019

(As of January 18, 2019)

STANDING

AGRICULTURE AND RURAL DEVELOPMENT

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

BANKING AND INSURANCE

Azinger (*Chair*), Clements (*Vice Chair*), Blair, Hamilton, Rucker, Swope, Tarr, Weld, Facemire, Jeffries, Palumbo, Prezioso, and Romano.

CONFIRMATIONS

Boley (*Chair*), Takubo (*Vice Chair*), Azinger, Blair, Boso, Weld, Palumbo, Plymale, and Prezioso.

ECONOMIC DEVELOPMENT

Maynard (*Chair*), Swope (*Vice Chair*), Azinger, Cline, Hamilton, Mann, Roberts, Tarr, Baldwin, Ihlenfeld, Jeffries, Romano, Stollings, and Woelfel.

EDUCATION

Rucker (*Chair*), Blair (*Vice Chair*), Azinger, Boley, Cline, Maynard, Roberts, Trump, Baldwin, Beach, Plymale, Romano, Stollings, and Unger.

ENERGY, INDUSTRY AND MINING

Smith (*Chair*), Sypolt (*Vice Chair*), Boley, Clements, Cline, Hamilton, Mann, Swope, Facemire, Ihlenfeld, Jeffries, Lindsay, and Woelfel.

SENATE COMMITTEES

ENROLLED BILLS

Maynard (*Chair*), Roberts (*Vice Chair*), Tarr, Lindsay, and Woelfel.

FINANCE

Blair (*Chair*), Mann (*Vice Chair*), Boley, Hamilton, Maroney, Roberts, Swope, Sypolt, Takubo, Tarr, Facemire, Ihlenfeld, Palumbo, Plymale, Prezioso, Stollings, and Unger.

GOVERNMENT ORGANIZATION

Boso (*Chair*), Swope (*Vice Chair*), Clements, Mann, Maroney, Smith, Sypolt, Tarr, Facemire, Ihlenfeld, Jeffries, Lindsay, Palumbo, and Woelfel.

HEALTH AND HUMAN RESOURCES

Maroney (*Chair*), Tarr (*Vice Chair*), Azinger, Maynard, Roberts, Rucker, Takubo, Weld, Palumbo, Plymale, Prezioso, Stollings, and Unger.

INTERSTATE COOPERATION

Cline (*Chair*), Maynard (*Vice Chair*), Boso, Hamilton, Hardesty, Ihlenfeld, and Unger.

JUDICIARY

Trump (*Chair*), Weld (*Vice Chair*), Azinger, Boso, Clements, Cline, Maynard, Rucker, Smith, Takubo, Baldwin, Beach, Hardesty, Jeffries, Lindsay, Romano, and Woelfel.

MILITARY

Weld (*Chair*), Maroney (*Vice Chair*), Cline, Hamilton, Smith, Sypolt, Facemire, Hardesty, and Lindsay.

SENATE COMMITTEES

NATURAL RESOURCES

Maynard (*Chair*), Mann (*Vice Chair*), Cline, Hamilton, Roberts, Rucker, Smith, Sypolt, Beach, Facemire, Hardesty, Prezioso, and Stollings.

PENSIONS

Azinger (*Chair*), Hamilton (*Vice Chair*), Boso, Trump, Ihlenfeld, Plymale, and Romano.

RULES

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

TRANSPORTATION AND INFRASTRUCTURE

Clements (*Chair*), Swope (*Vice Chair*), Boley, Boso, Mann, Roberts, Beach, Jeffries, and Plymale.

WORKFORCE

Swope (*Chair*), Weld (*Vice Chair*), Boley, Maroney, Rucker, Smith, Tarr, Baldwin, Beach, Jeffries, and Stollings.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST REGULAR SESSION, 2019

CHAPTER 1

(Com. Sub. for S. B. 510 - By Senators Takubo,
Maroney and Weld)

[Passed February 28, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §55-7B-6 of the Code of West Virginia, 1931, as amended, relating to medical professional liability; providing for requirements for notice of claim; setting out requirements for an expert who signs a certificate of merit; and providing for information to be included with the certificate of merit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-6. Prerequisites for filing an action against a health care provider; procedures; sanctions.

- 1 (a) Notwithstanding any other provision of this code, no
2 person may file a medical professional liability action
3 against any health care provider without complying with the
4 provisions of this section.
- 5 (b) At least 30 days prior to the filing of a medical
6 professional liability action against a health care provider,
7 the claimant shall serve by certified mail, return receipt
8 requested, a notice of claim on each health care provider the

9 claimant will join in litigation. For the purposes of this
10 section, where the medical professional liability claim
11 against a health care facility is premised upon the act or
12 failure to act of agents, servants, employees, or officers of
13 the health care facility, such agents, servants, employees, or
14 officers shall be identified by area of professional practice
15 or role in the health care at issue. The notice of claim shall
16 include a statement of the theory or theories of liability upon
17 which a cause of action may be based, and a list of all health
18 care providers and health care facilities to whom notices of
19 claim are being sent, together with a screening certificate of
20 merit. The screening certificate of merit shall be executed
21 under oath by a health care provider who:

22 (1) Is qualified as an expert under the West Virginia
23 rules of evidence;

24 (2) Meets the requirements of §55-7B-7(a)(5) and §55-
25 7B-7(a)(6) of this code; and

26 (3) Devoted, at the time of medical injury, 60 percent of
27 his or her professional time annually to the active clinical
28 practice in his or her medical field or specialty, or to
29 teaching in his or her medical field or specialty in an
30 accredited university.

31 If the health care provider executing the screening
32 certificate of merit meets the qualifications of subdivisions
33 (1), (2), and (3) of this subsection, there shall be a
34 presumption that the health care provider is qualified as an
35 expert for the purpose of executing a screening certificate of
36 merit. The screening certificate of merit shall state with
37 particularity, and include: (A) The basis for the expert's
38 familiarity with the applicable standard of care at issue; (B)
39 the expert's qualifications; (C) the expert's opinion as to
40 how the applicable standard of care was breached; (D) the
41 expert's opinion as to how the breach of the applicable
42 standard of care resulted in injury or death; and (E) a list of
43 all medical records and other information reviewed by the
44 expert executing the screening certificate of merit. A

45 separate screening certificate of merit must be provided for
46 each health care provider against whom a claim is asserted.
47 The health care provider signing the screening certificate of
48 merit shall have no financial interest in the underlying
49 claim, but may participate as an expert witness in any
50 judicial proceeding. Nothing in this subsection limits the
51 application of Rule 15 of the Rules of Civil Procedure. No
52 challenge to the notice of claim may be raised prior to
53 receipt of the notice of claim and the executed screening
54 certificate of merit.

55 (c) Notwithstanding any provision of this code, if a
56 claimant or his or her counsel believes that no screening
57 certificate of merit is necessary because the cause of action
58 is based upon a well-established legal theory of liability
59 which does not require expert testimony supporting a breach
60 of the applicable standard of care, the claimant or his or her
61 counsel shall file a statement specifically setting forth the
62 basis of the alleged liability of the health care provider in
63 lieu of a screening certificate of merit. The statement shall
64 be accompanied by the list of medical records and other
65 information otherwise required to be provided pursuant to
66 subsection (b) of this section.

67 (d) Except for medical professional liability actions
68 against a nursing home, assisted living facility, their related
69 entities or employees, or a distinct part of an acute care hospital
70 providing intermediate care or skilled nursing care or its
71 employees, if a claimant or his or her counsel has insufficient
72 time to obtain a screening certificate of merit prior to the
73 expiration of the applicable statute of limitations, the claimant
74 shall comply with the provisions of subsection (b) of this
75 section except that the claimant or his or her counsel shall
76 furnish the health care provider with a statement of intent to
77 provide a screening certificate of merit within 60 days of the
78 date the health care provider receives the notice of claim. The
79 screening certificate of merit shall be accompanied by a list of
80 the medical records otherwise required to be provided pursuant
81 to subsection (b) of this section.

82 (e) In medical professional liability actions against a
83 nursing home, assisted living facility, their related entities
84 or employees, or a distinct part of an acute care hospital
85 providing intermediate care or skilled nursing care or its
86 employees, if a claimant or his or her counsel has
87 insufficient time to obtain a screening certificate of merit
88 prior to the expiration of the applicable statute of
89 limitations, the claimant shall comply with the provisions of
90 subsection (b) of this section except that the claimant or his
91 or her counsel shall furnish the health care provider with a
92 statement of intent to provide a screening certificate of merit
93 within 180 days of the date the health care provider receives
94 the notice of claim.

95 (f) Any health care provider who receives a notice of
96 claim pursuant to the provisions of this section may
97 respond, in writing, to the claimant or his or her counsel
98 within 30 days of receipt of the claim or within 30 days of
99 receipt of the screening certificate of merit if the claimant is
100 proceeding pursuant to the provisions of subsection (d) or
101 (e) of this section. The response may state that the health
102 care provider has a bona fide defense and the name of the
103 health care provider's counsel, if any.

104 (g) Upon receipt of the notice of claim or of the
105 screening certificate of merit, if the claimant is proceeding
106 pursuant to the provisions of subsection (d) or (e) of this
107 section, the health care provider is entitled to prelitigation
108 mediation before a qualified mediator upon written demand
109 to the claimant.

110 (h) If the health care provider demands mediation
111 pursuant to the provisions of subsection (g) of this section,
112 the mediation shall be concluded within 45 days of the date
113 of the written demand. The mediation shall otherwise be
114 conducted pursuant to Rule 25 of the Trial Court Rules,
115 unless portions of the rule are clearly not applicable to a
116 mediation conducted prior to the filing of a complaint or
117 unless the Supreme Court of Appeals promulgates rules
118 governing mediation prior to the filing of a complaint. If

119 mediation is conducted, the claimant may depose the health
120 care provider before mediation or take the testimony of the
121 health care provider during the mediation.

122 (i)(1) Except for medical professional liability actions
123 against a nursing home, assisted living facility, their related
124 entities or employees, or a distinct part of an acute care
125 hospital providing intermediate care or skilled nursing care
126 or its employees, and except as otherwise provided in this
127 subsection, any statute of limitations applicable to a cause
128 of action against a health care provider upon whom notice
129 was served for alleged medical professional liability shall
130 be tolled from the date of mail of a notice of claim to 30
131 days following receipt of a response to the notice of claim,
132 30 days from the date a response to the notice of claim
133 would be due, or 30 days from the receipt by the claimant
134 of written notice from the mediator that the mediation has
135 not resulted in a settlement of the alleged claim and that
136 mediation is concluded, whichever last occurs.

137 (2) In medical professional liability actions against a
138 nursing home, assisted living facility, their related entities
139 or employees, or a distinct part of an acute care hospital
140 providing intermediate care or skilled nursing care or its
141 employees, except as otherwise provided in this subsection,
142 any statute of limitations applicable to a cause of action
143 against a health care provider upon whom notice was served
144 for alleged medical professional liability shall be tolled 180
145 days from the date of mail of a notice of claim to 30 days
146 following receipt of a response to the notice of claim, 30
147 days from the date a response to the notice of claim would
148 be due, or 30 days from the receipt by the claimant of
149 written notice from the mediator that the mediation has not
150 resulted in a settlement of the alleged claim and that
151 mediation is concluded, whichever last occurs.

152 (3) If a claimant has sent a notice of claim relating to
153 any injury or death to more than one health care provider,
154 any one of whom has demanded mediation, then the statute
155 of limitations shall be tolled with respect to, and only with

156 respect to, those health care providers to whom the claimant
157 sent a notice of claim to 30 days from the receipt of the
158 claimant of written notice from the mediator that the
159 mediation has not resulted in a settlement of the alleged
160 claim and that mediation is concluded.

161 (j) Notwithstanding any other provision of this code, a
162 notice of claim, a health care provider's response to any
163 notice claim, a screening certificate of merit, and the results
164 of any mediation conducted pursuant to the provisions of
165 this section are confidential and are not admissible as
166 evidence in any court proceeding unless the court, upon
167 hearing, determines that failure to disclose the contents
168 would cause a miscarriage of justice.



CHAPTER 2

**(Com. Sub. for H. B. 2618 - By Delegates Rowan, C.
Martin, Rohrbach, Sypolt, Graves, Lovejoy,
Longstreth, Boggs, Mandt, Maynard and J. Kelly)**

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

AN ACT to amend and reenact §55-7J-1 of the Code of West Virginia, 1931, as amended, relating to amending the definition of the terms “financial exploitation” or “financially exploit” to include the use of undue influence resulting in diminishment of assets of an elderly person, protected person or incapacitated adult; authorizing cause of action in magistrate and circuit court for financial exploitation due to intentional misappropriation or misuse of funds or undue influence against an elderly person, protected person or incapacitated adult; temporary relief may be granted without notice to the respondent; providing for issuance of protective orders; providing protective orders issued by a magistrate court are temporary; requiring magistrate

court to transfer matter to circuit court upon issuance of a temporary protective order; setting time frame for hearing; and authorizing circuit court to issue a permanent protective order under stated circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7J. FINANCIAL EXPLOITATION OF AN ELDERLY PERSON, PROTECTED PERSON, OR INCAPACITATED ADULT.

§55-7J-1. Action for financial exploitation of an elderly person, protected person or incapacitated adult; definitions.

1 (a) Any elderly person, protected person, or
2 incapacitated adult against whom an act of financial
3 exploitation has been committed may bring an action under
4 this article against any person who has committed an act of
5 financial exploitation against him or her.

6 (b) For the purposes of this article:

7 (1) “Incapacitated adult” has the same meaning as
8 prescribed under §61-2-29 of this code;

9 (2) “Elderly person” means a person who is 65 years or
10 older;

11 (3) “Financial exploitation” or “financially exploit”
12 means the intentional misappropriation or misuse of funds
13 or assets or the diminishment of assets due to undue
14 influence of an elderly person, protected person, or
15 incapacitated adult, but may not apply to a transaction or
16 disposition of funds or assets where the defendant made a
17 good-faith effort to assist the elderly person, protected
18 person, or incapacitated adult with the management of his
19 or her money or other things of value; and

20 (4) “Protected person” means any person who is defined
21 as a “protected person” in §44A-1-4 of this code and who is

22 subject to the protections of §44A-1-1 *et seq.* or §44C-1-1
23 *et seq.* of this code.

24 (c) Any person who believes that an elderly person,
25 protected person, or incapacitated adult is suffering financial
26 exploitation due to the intentional misappropriation or misuse
27 of funds or undue influence may bring an action for a
28 protective order pursuant to this section in the magistrate
29 court or circuit court in the county in which the elderly
30 person, protected person, or incapacitated adult resides:
31 *Provided*, That an action for relief brought in the magistrate
32 court of the county of residence of the elderly person,
33 protected person, or incapacitated adult believed to be the
34 victim of financial exploitation to stay further diminution of
35 the persons assets shall be temporary in nature.

36 (d) An action under this section is commenced by the filing
37 of a verified petition. Temporary relief may be granted without
38 notice to the person alleged to be engaging in financial
39 exploitation and without that person being present.

40 (e) If a magistrate court grants the petition and issues a
41 temporary protective order, the magistrate court shall
42 immediately transfer the matter to the circuit court of the
43 county in which the petition was filed. Upon receipt of the
44 notice of transfer from the magistrate court, the circuit court
45 shall set the matter for a review hearing within 20 days.
46 After a hearing, the circuit court may issue a permanent
47 protective order containing any relief the circuit court
48 determines necessary to protect the alleged victim if the
49 court finds by a preponderance of the evidence that:

50 (1) The respondent has committed an act against the
51 victim that constitutes financial exploitation; and

52 (2) There is reasonable cause to believe continued
53 financial exploitation will occur unless relief is granted; or

54 (3) The respondent consents to entry of the permanent
55 protective order.



CHAPTER 3

**(Com. Sub. for S. B. 285 - By Senators Sypolt,
Azinger, Beach, Boso, Clements, Cline, Facemire,
Hamilton, Maynard, Prezioso, Smith, Stollings,
Swope, Takubo, Tarr, Trump, Rucker, Roberts and
Maroney)**

[Passed March 7, 2019; in effect ninety days from passage.]

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

AN ACT to amend and reenact §19-35-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §19-35-6, all relating to the sale of homemade food items; defining terms; authorizing production and sale of homemade food items under certain circumstances; establishing conditions for exemption from licensure, permitting, inspection, packaging, and labeling laws; providing required notices to consumer; defining manner of providing notices; exempting certain products from the scope of this provision; permitting local health departments and the Department of Agriculture to investigate and cease production or sale of food items reported to have caused a foodborne illness; authorizing Department of Agriculture to provide assistance, consultation, or inspection at request of producer; providing for preemption of county, local, and municipal ordinances; providing that preemption does not apply to space rentals at government-owned or operated facilities, government-sanctioned or operated events, or product placement agreements with government-owned facilities, as well as temporary events 14 days or less in duration; and providing for exemptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 35. FARMERS MARKETS AND COTTAGE FOODS.**§19-35-2. Definitions.**

1 For purposes of this article:

2 “Consignment farmers market” means a farmers market
3 in which two or more vendors deliver their own farm and
4 food products to a common location maintained by a third
5 party that markets the vendors’ products and receives a
6 percentage share of the profits from sales, with the
7 individual vendor retaining ownership of the farm and food
8 product until it is sold. A consignment farmers market may
9 be mobile or in a stationary location.

10 “Delivered” means transferred to the consumer, either
11 immediately upon sale or at a time thereafter.

12 “Department” means the Department of Agriculture.

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

17 “Farmers market” means:

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

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

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

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

27 “Farmers market vendor” or “vendor” means a person
28 or entity that sells farm and food products at a farmers
29 market.

30 “Homemade food item” means a nonpotentially
31 hazardous food item, including a nonalcoholic beverage,
32 which is produced and/or packaged at the private residence
33 of the producer.

34 “Nonpotentially hazardous” means food that does not
35 require time/temperature control for safety to limit
36 pathogenic microorganism growth or toxin formation.

37 “Produce” means to prepare a food item by cooking,
38 baking, drying, mixing, cutting, fermenting, preserving,
39 dehydrating, growing, raising, or other process.

40 “Producer” means the person who produces a
41 homemade food item.

42 “Retailer” means and includes every person engaging in
43 the business of selling, leasing, or renting tangible personal
44 property.

45 “Seller” means the person who sells a homemade food
46 item to a consumer. The seller of the homemade food item
47 may be the producer of the item, an agent of the producer,
48 or a third-party vendor, such as a retail shop or grocery
49 store.

§19-35-6. Direct sale of homemade food items.

1 (a) The production and sale of homemade food items,
2 when done in conformity with this section, are exempt from
3 licensing, permitting, inspection, packaging, and labeling
4 laws of this state.

5 (b) The following conditions apply to the sale and
6 delivery of homemade food items:

7 (1) The homemade food item must be sold by the
8 producer to the consumer, whether in person or remotely, or
9 by an agent of the producer or a third-party vendor; and

10 (2) The homemade food items must be delivered to the
11 consumer by the producer, an agent of the producer, a third-
12 party vendor, or a third-party carrier.

13 (c) The following information must be provided to the
14 consumer, in the format required by subsection (d) of this
15 section:

16 (1) The name, home address, and telephone number of
17 the producer of the homemade food item;

18 (2) The common or usual name of the homemade food
19 item;

20 (3) The ingredients of the homemade food item in
21 descending order of predominance; and

22 (4) The following statement: "This product was
23 produced at a private residence that is exempt from State
24 licensing and inspection. This product may contain
25 allergens."

26 (d) The information required by subsection (c) of this
27 section must be provided:

28 (1) On a label affixed to the package, if the homemade
29 food item is packaged;

30 (2) On a label affixed to the container, if the homemade
31 food item is offered for sale from a bulk container;

32 (3) On a placard displayed at the point of sale, if the
33 homemade food item is neither packaged nor offered for
34 sale from a bulk container;

35 (4) On the webpage on which the homemade food item
36 is offered for sale, if the homemade food item is offered for
37 sale on the Internet; or

38 (5) On a receipt or other document provided to the
39 customer with the homemade food item.

40 (e) The homemade food item must not be meat, meat
41 byproduct, meat food product, poultry, poultry byproduct,
42 or poultry food product, as those terms are defined for
43 purposes of the federal Meat Inspection Act and federal
44 Poultry Products Inspection Act, unless the production and
45 sale of the items are within the exemption in 9 C.F.R.
46 §303.1(d), §381.10(c), or §381.10(d) and comply with other
47 applicable federal regulations.

48 (f) This section shall not be construed to:

49 (1) Impede the authority of a local health department or
50 the department to investigate or cease the production or sale
51 of food items reported to have caused a foodborne illness;

52 (2) Preclude the department from providing assistance,
53 consultation, or inspection at the request of the producer of
54 a homemade food item;

55 (3) Preclude the production or sale of food items
56 otherwise allowed by law;

57 (4) Exempt a producer, seller, third-party vendor, or
58 third-party agent from any applicable tax law;

59 (5) Exempt producers or sellers of homemade food
60 items from any law that requires the producer, seller, third-
61 party vendor, or third-party agent to register its business
62 name, address, and other identification information with the
63 state;

64 (6) Exempt producers or sellers of homemade food
65 items from any applicable law of the federal government,
66 including any federal law prohibiting the sale of certain food
67 items in interstate commerce; or

68 (7) Exempt producers or sellers of homemade food
69 items from any applicable law of another state.

70 (g) This section preempts county, municipal, and other
 71 political jurisdictions from prohibiting and regulating the
 72 production and sale of homemade food items: *Provided,*
 73 That such preemption shall not include space rentals at
 74 government-owned or operated facilities, government-
 75 sanctioned or operated events, or product placement
 76 agreements with government-owned facilities, as well as
 77 temporary events 14 days or less in duration.

CHAPTER 4

**(Com. Sub. for S. B. 323 - By Senators Baldwin,
 Beach, Maynard, Romano, Rucker, Smith, Sypolt,
 Plymale, Cline, Roberts, Hamilton and Stollings)**

[Passed February 13, 2019; in effect from passage.]
 [Approved by the Governor on February 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-1-4e; and to amend and reenact §19-12A-6a of said code, all relating to establishing and funding a special revenue fund to be known as the Department of Agriculture Capital Improvements Fund; creating the fund; providing for administration by Department of Agriculture; identifying sources of moneys for said fund; identifying expenditures that may be made from said fund; providing for funds to remain at end of each fiscal year; eliminating certain deposits in the General Revenue Fund; permitting deposits into certain funds; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-4e. Department of Agriculture Capital Improvements Fund.

1 There is hereby created in the State Treasury a special
2 revenue account to be known as the Department of
3 Agriculture Capital Improvements Fund. The fund shall be
4 administered by the Department of Agriculture. The fund
5 shall consist of all moneys transferred into the fund pursuant
6 to §19-12A-6a of this code, any moneys that may be
7 appropriated and designated for the fund by the Legislature,
8 and all interest or other return earned from investment of the
9 fund.

10 Expenditures from the fund shall be for the purpose of
11 funding construction and capital improvements to facilities
12 owned or occupied by the Department of Agriculture and
13 are not authorized from collections, but are to be made only
14 in accordance with appropriation by the Legislature and in
15 accordance with the provisions of §12-3-1 *et seq.* of this
16 code and upon the fulfillment of the provisions set forth in
17 §11B-2-1 *et seq.* of this code. Any balance, including
18 accrued interest and other returns, remaining in the fund at
19 the end of each fiscal year shall not revert to the General
20 Revenue Fund, but shall remain in the fund and be expended
21 as provided by this section.

ARTICLE 12A. LAND DIVISION.**§19-12A-6a. Special revenue account.**

1 All funds collected by the department pursuant to this
2 article, whether from the sale of food, the disposition of
3 assets other than land, the lease of land or minerals or any
4 other source, shall be paid into a special revenue account to
5 be used for the purposes of this article: *Provided*, That when
6 the remaining balance at the end of any fiscal year of the
7 funds so collected and deposited in the special revenue
8 account exceeds \$1 million, the department may transfer the
9 excess funds to the Department of Agriculture Capital
10 Improvements Fund established in §19-1-4e of this code.

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CHAPTER 5

**(S. B. 324 - By Senators Sypolt, Beach, Rucker,
Smith, Weld, Boso, Cline, Clements, Tarr and
Hamilton)**

[Passed February 7, 2019; in effect from passage.]
[Approved by the Governor on February 19, 2019.]

AN ACT to amend and reenact §19-1-3 of the Code of West Virginia, 1931, as amended, relating to employees of the Commissioner of Agriculture.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-3. Employees; itemized statement of expenditures; monthly statement and payment of moneys received by commissioner.

1 The commissioner shall organize his or her department
2 and may employ a general counsel and other such legal,
3 business, science, and technical professionals, para-
4 professionals, and experts, and employees as may be
5 necessary to perform the duties of the office. He or she shall
6 fix their compensation and may require them to give bond
7 for the faithful performance of their duties.

8 The commissioner shall certify to the State Auditor,
9 from time to time, an itemized account of all expenditures
10 made by him or her for employee hire and other purposes,
11 whereupon the Auditor shall draw his or her warrant on the
12 State Treasurer for the payment thereof out of the funds
13 appropriated by the Legislature for that purpose, but in no
14 case to exceed such appropriation.

15 The commissioner shall, within 10 days after the
16 expiration of each month, submit to the Auditor and
17 Treasurer an itemized statement of all moneys received by
18 him or her during that month, and at the same time pay such
19 money into the State Treasury.

●

CHAPTER 6

**(Com. Sub. for S. B. 344 - By Senators Carmichael
(Mr. President), Prezioso and Cline)**

[Passed March 5, 2019; in effect from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to repeal §19-12A-3, §19-12A-7, and §19-12A-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §19-12A-1, §19-12A-2, §19-12A-5, and §19-12A-6 of said code, all relating to the operation of state-owned farms; clarifying that state-owned farms are managed by the Commissioner of the Department of Agriculture; removing reference to Farm Management Commission; defining terms; removing language regarding organization and duties of Farm Management Commission; expanding permissive uses and purposes of institutional farms; replacing outdated language referencing to the Department of Health and Human Resources and Division of Corrections and Rehabilitation; authorizing Commissioner of Agriculture to request inmate labor on institutional farms; providing that state institutions may purchase items from vendors that state-owned farms cannot provide; removing references to Farm Management Director and replacing with commissioner; and removing outdated language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12A. LAND DIVISION.

§19-12A-1. Legislative findings and declarations.

1 The Legislature hereby finds and declares that in order
2 to ensure economic and efficient land use, increase and
3 improve agricultural production, and provide food for
4 residents of state operated institutions, state-owned farms
5 should operate under the control of the Commissioner of
6 Agriculture. The Legislature also finds and declares that the
7 operation of all institutional farms under one management
8 system with a single integrated farm plan is the most
9 efficient method of providing the food needs of residents of
10 state-operated institutions and will promote the health and
11 welfare of all citizens of this state.

§19-12A-2. Definitions.

1 For the purpose of this article:

2 “Agricultural products” means livestock and livestock
3 products, poultry and poultry products, fruits and fruit
4 products, vegetables and vegetable products, grains and
5 hays and the products derived therefrom, tobacco, syrups,
6 honey, and other products derived from the business of
7 farming; including such other products as may be
8 manufactured, derived, or prepared from agricultural
9 products, raw or processed, which are used as food for man
10 or animals.

11 “Commission” means the Farm Management
12 Commission as established by this article.

13 “Commissioner” means the Commissioner of
14 Agriculture, or his or her designee.

15 “Department” means the Department of Agriculture.

16 “Farm equipment” means any equipment used for
17 agricultural production.

18 “Farm facility” means any processing plant, milking
19 parlor, farm equipment storage building, barn, silo, grain

20 storage building, swinery, or any other building owned by
21 an institution used in its farming operations.

22 “Institution” means any facility operated by the
23 Department of Health and Human Resources or the Division
24 of Corrections and Rehabilitation.

25 “Institutional farm” means any land which was formerly
26 operated as a farm, is now being operated as a farm, or could
27 be converted to agricultural production.

**§19-12A-3. Farm management commission continued;
composition; chairman; quorum; meetings; vacancies.**

1 [Repealed.]

§19-12A-5. Powers, duties, and responsibilities of commissioner.

1 (a) The commissioner shall manage all institutional
2 farms, equipment, and other property in order to most
3 efficiently produce food products for state institutions,
4 support the department and its activities, advance the
5 agricultural interests of the state, as identified by the
6 commissioner, and otherwise implement the intent of the
7 Legislature as set forth by this article. From the total amount
8 of food, milk, and other commodities produced on
9 institutional farms, the commissioner shall sell, at prevailing
10 wholesale prices, and each of the institutions under the
11 control of the Department of Health and Human Resources
12 and Division of Corrections and Rehabilitation shall
13 purchase, these products based on the dietary needs of each
14 institution: *Provided*, That if the commissioner cannot sell
15 sufficient food products to each institution to meet the
16 demand created, each institution may purchase such food
17 products from vendors who can supply those food products
18 at the greatest savings to the taxpayers of the state.

19 (b) If requested by the Commissioner of the Division of
20 Corrections and Rehabilitation, the commissioner may
21 authorize the Division of Corrections and Rehabilitation to
22 operate a farm or other enterprise using inmates as labor on

23 those lands. The Commissioner of the Division of
24 Corrections and Rehabilitation is responsible for the
25 selection, direction, and supervision of the inmates and
26 shall, in consultation with the Commissioner of Agriculture,
27 assign the work to be performed by inmates. The
28 Commissioner of Agriculture may also request inmate labor
29 to perform work on the institutional farms, and if requested,
30 the Commissioner of the Division of Corrections and
31 Rehabilitation shall provide inmate labor, if available.

32 (c) The commissioner is hereby authorized and
33 empowered to:

34 (1) Lease to public or private parties, for purposes
35 including agricultural production or experimentation, public
36 necessity, or other purposes, any land, easements,
37 equipment, or other property, except that property may not
38 be leased for any use in any manner that would render the
39 land toxic for agricultural use, nor may toxic or hazardous
40 materials as identified by the Commissioner of Agriculture
41 be used or stored upon such property unless all applicable
42 state and federal permits necessary are obtained. Any lease
43 for an annual consideration of \$1,000 or more shall be by
44 sealed bid auction and the commission shall give notice of
45 such auction by publication thereof as a Class II-0 legal
46 advertisement in compliance with the provisions of §59-3-1
47 *et seq.* of this code, and the publication area for such
48 publication is the county in which the property to be leased
49 is located;

50 (2) Transfer to the public land corporation land
51 designated in its management plan as land to be disposed of,
52 which land shall be sold, exchanged, or otherwise
53 transferred pursuant to §5A-11-4 and §5A-11-5 of this code;

54 (3) Develop lands to which it has title for the public use
55 including forestation, recreation, wildlife, stock grazing,
56 agricultural production, rehabilitation and/or other
57 conservation activities and may contract or lease for the
58 proper development of timber, oil, gas, or mineral

59 resources, including coal by underground mining or by
60 surface mining where reclamation as required by
61 specifications of the Department of Environmental
62 Protection will increase the beneficial use of such property.
63 Any such contract or lease shall be by sealed bid auction as
64 provided for in subdivision (1) of this subsection; and

65 (4) Exercise all other powers and duties necessary to
66 effectuate the purposes of this article.

67 (d) Notwithstanding the provisions of subsection (c) of
68 this section, no timberland may be leased, sold, exchanged,
69 or otherwise disposed of unless there is no commercially
70 salable timber on the timberland, an inventory is provided,
71 an appraisal of the timber is provided, and the sale, lease,
72 exchange, or other disposition is accomplished by the sealed
73 bid auction procedure provided above in subdivision (1) or
74 (2), subsection (c) of this section as applicable.

75 (e) The commissioner may promulgate, pursuant to §29-
76 1-1 *et seq.* of this code, rules and regulations relating to the
77 powers and duties of the commissioner as enumerated in
78 this section.

§19-12A-6. Commissioner's powers and duties.

1 The commissioner or his or her designee is responsible
2 for conducting the operations of the farms and shall:

3 (1) Prepare an annual report of the farming operations,
4 including a listing of all receipts and expenditures and shall
5 present it to the Legislature at the end of each fiscal year.

6 (2) Prepare the annual budget request for the operation
7 of the institutional farms.

8 (3) Receive and approve all requisitions for farm
9 supplies and equipment.

10 (4) Supervise the operation of all canneries and
11 determine what foods are to be canned.

12 (5) Recruit and approve assistant farm managers to
13 supervise each institutional farm.

14 (6) Transfer farm supplies, farm equipment, farm
15 facilities, food stuffs, and produce from one institutional
16 farm to another to promote efficiency and improve farm
17 management.

18 (7) Rent or lease additional land for farm use.

19 By September 30 each year, each institution under the
20 control of the Department of Health and Human Resources
21 and the Division of Corrections and Rehabilitation shall
22 present to the commissioner a purchase order for its food
23 requirements during the next fiscal year as determined by
24 the institution. If, during the year, an institution finds that it
25 needs other or additional food, milk, or commodities not
26 included in its purchase order for the year, the institutional
27 superintendent may forward a supplemental request to the
28 commissioner, which order may be filled depending on
29 availability. If institutional farms produce more food, milk,
30 and other commodities than can be sold to the institutions,
31 the commissioner may sell the surplus to other state
32 agencies willing to purchase. If any surplus remains after
33 sales to other state agencies, the commissioner may sell the
34 surplus on the open market or turn over any surplus food
35 products to appropriate public, nonprofit agencies.

**§19-12A-7. Farm division lines to be established; appeal to
commission; remedy.**

1 [Repealed.]

§19-12A-8. Effect of management plan on employees.

1 [Repealed.]



CHAPTER 7

**(Com. Sub. for S. B. 393 - By Senators Sypolt,
Azinger, Baldwin, Blair, Boso, Clements, Hamilton,
Jeffries, Maynard, Hardesty, Rucker, Smith, Takubo,
Tarr, Plymale, Beach, Cline, Roberts, Swope and
Trump)**

[Passed March 5, 2019; in effect ninety days from passage.]

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

AN ACT to amend and reenact §19-19-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §19-19-7 and §19-19-8, all relating to the right to farm; providing for amended definitions of “agriculture” and “agricultural land”; defining the term “agricultural operation”; limiting persons who may file a nuisance action against an agricultural operation; providing for protections to agricultural operations from nuisance actions under certain circumstances; prohibiting state and local agencies from bringing actions against agricultural operations for activities that are in material compliance with applicable state and federal laws, regulations, and permits; exempting agricultural operations from municipal requirements under certain circumstances; providing that protections from nuisance actions do not apply under certain circumstances; permitting that the protected status of an agricultural operation is assignable, alienable, and inheritable; making a person who brings a nuisance action against a protected agricultural operation liable for the costs and expenses of the agricultural operation in defending the action; limiting total damages to the diminished value of the subject property; providing for the exclusive compensatory damages that may be awarded to a claimant where the alleged nuisance originates from an agricultural operation; providing

that the combined recovery of any claimant or claimant's successor in interest against an agricultural operation shall not exceed the fair market value of his or her property; and prohibiting punitive damages being awarded to a claimant for nuisance actions originating from an agricultural operation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 19. PRESERVATION OF AGRICULTURAL PRODUCTION.

§19-19-2. Definitions.

1 For the purposes of this article:

2 (a) "Agriculture" shall mean the production of food,
3 fiber and woodland products, by means of cultivation,
4 tillage of the soil and by the conduct of animal, livestock,
5 dairy, apiary, equine or poultry husbandry, and the practice
6 of forestry, silviculture, horticulture, harvesting of
7 silviculture products, packing, shipping, milling, and
8 marketing of agricultural products conducted by the
9 proprietor of the agricultural operation, or any other legal
10 plant or animal production and all farm practices.

11 (b) "Agricultural land" shall mean any amount of land
12 and the improvements thereupon, used or usable in the
13 production of food, fiber or woodland products of an annual
14 value of \$1,000 or more, by the conduct of the business of
15 agriculture, as defined in subsection (a) of this section.

16 (c) "Agricultural operation" shall mean any facility
17 utilized for agriculture.

§19-19-7. Additional limitations on nuisance actions.

1 (a) The provisions of this section are in addition to the
2 limitations on actions brought against an agricultural
3 operation in §19-19-4 of this code, and shall also apply to
4 any nuisance action brought against an agricultural
5 operation in any court of this state.

6 (b) A person may not file a nuisance action to recover
7 damages in which an agricultural operation is alleged to be
8 a public or private nuisance unless:

9 (1) He or she is the majority legal land owner;

10 (2) He or she owns property adversely affected by
11 agricultural operations within one half mile of the
12 agricultural operation; and

13 (3) The agricultural operation has materially violated a
14 federal, state, or local law applicable to agriculture.

15 (c) No agricultural operation within this state which has
16 been in operation for a period of more than one year shall
17 be considered a nuisance, either public or private, as the
18 result of a changed condition in or about the locality where
19 such agricultural operation is located. In any nuisance
20 action, public or private, against an agricultural operation or
21 its principals or employees proof that the agricultural
22 operation has existed for one year or more is an absolute
23 defense to the nuisance action, if the operation is in
24 compliance with all applicable state and federal laws,
25 regulations, and permits.

26 (d) No state or local agency may bring a criminal or civil
27 action against an agricultural operation for an activity that
28 is in material compliance with all applicable state and
29 federal laws, regulations, and permits.

30 (e) No agricultural operation shall be or become a
31 private or public nuisance if the operators are conducting
32 the agricultural operation in a manner consistent with
33 commonly accepted agricultural practice. If the operation is
34 in material compliance with all applicable state and federal
35 laws, regulations, and permits, it shall be presumed to be
36 conducted in a manner consistent with commonly accepted
37 agricultural practice.

38 (f) No agricultural operation shall be considered a
39 nuisance, private or public, if the agricultural operation

40 makes a reasonable expansion, so long as the operation is in
41 material compliance with all applicable state and federal
42 laws, regulations, and permits.

43 (1) For the purpose of this section, a reasonable
44 expansion includes, but is not limited to:

45 (A) Transfer of the agricultural operation;

46 (B) Purchase of additional land for the agricultural
47 operation;

48 (C) Introducing technology to an existing agricultural
49 operation including, but not limited to, new activities,
50 practices, equipment, and procedures consistent with
51 technological development within the agricultural industry;

52 (D) Applying a Natural Resources Conservation Service
53 program or other United States Department of Agriculture
54 program to an existing or future agricultural operation; or

55 (E) Any other change that is related and applied to an
56 existing agricultural operation, so long as the change does
57 not affect the agricultural operation's compliance with
58 applicable state and federal laws, regulations, and permits.

59 (2) The reasonable expansion exemption provided by
60 this subsection cannot apply to an expansion that:

61 (A) Creates a substantially adverse effect upon the
62 environment; or

63 (B) Creates a hazard to public health and safety.

64 (g) A requirement of a municipality does not apply to an
65 agricultural operation situated outside of the municipality's
66 corporate boundaries on the effective date of this chapter. If
67 an agricultural operation is subsequently annexed or
68 otherwise brought within the corporate boundaries of a
69 municipality, the requirements of the municipality do not
70 apply to the agricultural operation.

71 (h) An agricultural operation is not, nor shall it become,
72 a private or public nuisance after it has been in operation for
73 more than one year, if such operation was not a nuisance at
74 the time the operation began, and the conditions or
75 circumstances complained of as constituting the basis for
76 the nuisance action exist substantially unchanged since the
77 established date of operation. The established date of
78 operation is the date on which an agricultural operation
79 commenced.

80 (i) The provisions of this section shall not apply in any
81 of the following circumstances:

82 (1) Whenever a nuisance results from the negligent
83 operation of any such agricultural operation; or

84 (2) To affect or defeat the right of any person to recover
85 for injuries or damages sustained because of an agricultural
86 operation or portion of an agricultural operation that is
87 conducted in violation of a federal, state, or local statute or
88 governmental requirement that applies to the agricultural
89 operation or portion of agricultural operation.

90 (j) The protected status of an agricultural operation,
91 once acquired, is assignable, alienable, and inheritable. The
92 protected status of an agricultural operation, once acquired,
93 may not be waived by the temporary cessation of operations
94 or by diminishing the size of the operation.

§19-19-8. Damages.

1 (a) A person who brings a nuisance action for damages
2 or injunctive relief against an agricultural operation that
3 has existed for one year or more prior to the date that the
4 action is instituted or who violates the provisions of §19-
5 19-7(h) of this code is liable to the agricultural operation
6 for all costs and expenses incurred in defense of the action,
7 including, but not limited to, attorneys' fees, court costs,
8 travel, and other related incidental expenses incurred in the
9 defense.

10 (b) In no event shall the total amount of damages in any
11 successful nuisance action exceed the diminished value of
12 the subject property.

13 (c) The exclusive compensatory damages that may be
14 awarded to a claimant where the alleged nuisance originates
15 from an agricultural operation shall be as follows:

16 (1) If the nuisance is determined to be a permanent
17 nuisance, compensatory damages shall be limited to the
18 reduction in the fair market value of the claimant's property
19 caused by the nuisance, not to exceed the fair market value
20 of the claimant's property; and

21 (2) If the nuisance is determined to be a temporary
22 nuisance, compensatory damages shall be limited to the
23 diminution of the fair rental value of the claimant's property
24 caused by the nuisance.

25 (d) If any claimant or claimant's successor in interest
26 brings a subsequent private nuisance action against any
27 agricultural operation, the combined recovery from all
28 such actions shall not exceed the fair market value of his
29 or her property. This limitation applies regardless of
30 whether the subsequent action or actions were brought
31 against a different defendant than the preceding action or
32 actions.

33 (e) A claimant shall not be awarded punitive damages
34 for nuisance actions originating from an agricultural
35 operation.

●

CHAPTER 8

(Com. Sub. for S. B. 404 - By Senators Sypolt and Boso)

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

AN ACT to amend and reenact §19-1B-4, §19-1B-6, §19-1B-7, §19-1B-10, and §19-1B-12a of the Code of West Virginia, 1931, as amended, all relating generally to sediment control during commercial timber harvesting operations; increasing the threshold amount before a logger must follow certain licensing requirements regarding sediment control; requiring the logger to notify the Director of the Division of Forestry at least three days before timbering begins; requiring certain training requirements prior to recertification of certified loggers; providing for appeals; increasing criminal penalties; and editing certain limitations on issuing citations and powers of arrest.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. SEDIMENT CONTROL DURING COMMERCIAL TIMBER HARVESTING OPERATIONS.

§19-1B-4. Timbering license required; requirement for license; exemption; annual fee; rules.

1 (a) A person may not conduct timbering operations,
2 purchase timber, or buy logs for resale until he or she has
3 obtained a license and met the requirements of this article.

4 (b) Exemptions. — A person who severs or removes, or
5 hires or contracts with another to sever or remove, standing
6 trees from his or her own land is exempted from the
7 timbering operations licensure requirement of this section

8 during any calendar year in which all trees severed or
9 removed by or on behalf of the owner of record has a total
10 gross sales value received by the exemption holder of less
11 than \$52,000. A person hired or contracted to sever or
12 remove standing trees from the land of another is exempted
13 from the timbering operations licensure requirement of this
14 section during any calendar year in which all trees severed
15 or removed by the hired or contracted person has a total
16 gross sales value received by the exemption holder of less
17 than \$52,000.

18 (c) An applicant for a timbering operation license shall
19 submit an application and the fee of \$150 for each biennial
20 renewal of the license. The application shall contain the
21 following information:

22 (1) Name, address, and telephone number of the
23 applicant and, if the applicant is a business entity other than
24 a sole proprietor, the names and addresses of the principals,
25 officers, and resident agent of the business entity;

26 (2) The applicant's West Virginia business registration
27 number or a copy of the current West Virginia business
28 registration certificate. The Division of Forestry shall
29 submit this information and a list of all applicants to the Tax
30 Commissioner each month of the calendar year to ensure
31 compliance with payment of severance, income
32 withholding, and all other applicable state taxes; and

33 (3) Any other information as required by the director.

34 (d) The director shall propose rules for legislative
35 approval pursuant to the provisions of §29A-3-1 *et seq.* of
36 this code regarding the acquisition, suspension, and
37 revocation of a license under this article. The rules are the
38 proper subject of emergency legislative rules that may be
39 promulgated in accordance with the provision of §29A-3-15
40 of this code.

41 (e) The director shall prescribe a form providing the
42 contents and manner of posting notice at the timbering
43 operation. The notice shall include, at a minimum, the
44 operator's name and license number.

**§19-1B-6. Notification of duration of timbering operations or
harvesting of timber for sale; requirements thereof.**

1 (a) In addition to any other requirement of this article,
2 no person may conduct timbering operations and no person
3 may sever trees for sale unless the person notifies the
4 director of the specific location on which the timbering
5 operations or harvesting of timber are to be conducted. The
6 notification shall be made in a manner designated by the
7 director.

8 (1) All persons who conduct timbering operations or
9 who harvest timber for sale, including those persons who
10 are specifically exempted from the licensure requirements
11 of §19-1B-4 of this code, shall provide to the director of the
12 division notification of harvesting of timber, which shall
13 include:

14 (A) The name and address of the harvester of timber;

15 (B) The name and addresses of the owner or owners of
16 the property upon which the timber is located;

17 (C) The business tax number or social security number
18 of the harvester of timber; and

19 (D) An acknowledgment that the harvester of timber
20 will conduct the harvest according to best management
21 practices.

22 (2) In addition to the requirements of subdivision (1) of
23 this subsection, persons who are subject to the licensure
24 requirements of §19-1B-4 of this code shall provide to the
25 director of the division notification of timbering operations,
26 which shall include, at a minimum, the following:

27 (A) The specific topographic location where the
28 timbering operations are to be conducted;

29 (B) The approximate dates that the timbering operation
30 will begin and end;

31 (C) The approximate acreage over which timbering
32 operations are contemplated;

33 (D) The names and addresses of the owner or owners of
34 the timber to be harvested and, if different, the names and
35 addresses of the owner or owners of the property upon
36 which the timber is located;

37 (E) A sketch map of the proposed logging operation,
38 including haul roads, landings, and stream crossings;

39 (F) A description of the sediment control practices to be
40 used by the logger during the timber harvesting operation;

41 (G) An acknowledgment that the operator will conduct
42 the operations in compliance with the provisions of this
43 article and any applicable rules promulgated pursuant to this
44 article;

45 (H) A certification satisfactory to the director that all
46 permits required under state law have been obtained or
47 applied for and that all pertinent requirements for obtaining
48 any permit applied for, but not yet obtained, have been
49 complied with; and

50 (I) The name or names of the person or persons who will
51 be supervising the timbering operations at the site of the
52 operations and his or her logger certification numbers.

53 (b) The notification shall be made at least three days
54 before the start of the operation.

55 (c) Further notice shall be given if the operation is to be,
56 for any reason, closed more than seven days before the

57 estimated date for closing provided under paragraph (B),
58 subdivision (2), subsection (a) of this section.

§19-1B-7. Certification of persons supervising timbering operations; timbering operations to be supervised; promulgation of rules.

1 (a) Any individual supervising any licensed timbering
2 operation, or any individual supervising any timbering
3 operation that is not exempted from the licensing
4 requirements set forth in §19-1B-4 of this code, must be
5 certified pursuant to this section.

6 (b) The director is responsible for the development of
7 standards and criteria for education, training, and
8 examination that must be successfully completed for
9 persons to be certified to supervise any timbering operation.
10 The certified logger shall attend a total of six hours of
11 training every two years prior to recertification. The
12 program for certified loggers shall, at a minimum, provide
13 for education and training in the safe conduct of timbering
14 operations, in first aid procedures, and in the use of best
15 management practices to prevent soil erosion on timbering
16 operations. The goals of this program will be to assure that
17 timbering operations are conducted in accordance with
18 applicable state and federal safety regulations in a manner
19 that is environmentally sound and safe.

20 (c) The director shall provide programs using the
21 resources of the division, other appropriate state agencies,
22 educational entities, and other qualified persons. Each
23 inspector under the jurisdiction of the chief shall attend a
24 certification program free of charge and complete the
25 certification requirements of this section.

26 (d) The director shall propose rules for legislative
27 approval in accordance with §29A-3-1 *et seq.* of this code
28 to effectuate the purposes of this article.

29 (e) Upon a person's successful completion of the
30 certification requirements, the director shall provide proof

31 of the completion by issuing a numbered certificate and a
32 wallet-sized card to that person. The division shall maintain
33 a record of each certificate issued and the person to whom
34 it was issued.

35 (f) The certified logger shall submit a fee of \$150 for the
36 initial certification application and the renewal application
37 every two years thereafter.

38 (g) Every timbering operation that is required to be
39 licensed under §19-1B-4 of this code must have at least one
40 person certified pursuant to this section supervising the
41 operation at any time the timbering operation is being
42 conducted. All timbering operators shall be guided by the
43 West Virginia forest practice standards and the West
44 Virginia silvicultural best management practices to reduce
45 sediment movement during a timber operation.

46 (h) The director shall, at no more than five-year
47 intervals, convene a committee to review the best
48 management practices to ensure that they reflect and
49 incorporate the most current technologies. The committee
50 shall, at a minimum, include a person researching
51 silvicultural best management practices, a person in the field
52 of silviculture, two loggers certified under this article, a
53 representative of the Division of Water and Waste
54 Management of the Department of Environmental
55 Protection, and a representative of an environmental
56 organization. The director shall chair the committee and
57 may amend the best management practices according to the
58 suggestions of the committee for the next certification cycle.

§19-1B-10. Orders of the director.

1 Notwithstanding the provisions of §19-1B-5 of this
2 code, whenever the director determines that any person has
3 violated a provision of this article or any rules promulgated
4 pursuant thereto, he or she may enter an order directing the
5 person to cease the violation and, where appropriate, to take

6 such action to remediate damage created or to take action
7 appropriate for the specific site.

8 Any person having an interest which is or may be
9 adversely affected by any order of the director may file an
10 appeal in accordance with the provisions of §19-1B-11 of
11 this code. Any person or entity aggrieved by an order issued
12 under the provisions of §19-1B-5(b) or §19-1B-5(c) of this
13 code may file an appeal under the provisions of §19-1B-11
14 of this code.

15 Any persons or entity aggrieved by a suspension or
16 revocation order issued under the provisions of §19-1B-5(e)
17 or §19-1B-5(f) of this code may file an appeal in accordance
18 with the provisions of §29A-5-1 *et seq.* and §29A-6-1 *et seq.*
19 of this code.

§19-1B-12a. Criminal and civil penalties.

1 (a) It is illegal for a person to:

2 (1) Conduct timbering operations, purchase timber, or
3 buy logs for resale in this state without holding a valid
4 license from the Director of the Division of Forestry, as
5 required by §19-1B-4 of this code;

6 (2) Conduct timbering operations or sever trees for sale
7 at a location in this state without providing the Director of
8 the Division of Forestry with notice of the location where
9 the timbering or harvesting operations are to be conducted,
10 as required by §19-1B-6 of this code;

11 (3) Conduct a timbering operation in this state that is not
12 supervised by a certified logger who holds a valid certificate
13 from the Director of the Division of Forestry, as required by
14 §19-1B-7 of this code;

15 (4) Continue to conduct timbering operations in
16 violation of a suspension or revocation order that has been
17 issued by the Director of the Division of Forestry or a

18 conference panel under §19-1B-5, §19-1B-10, or §19-1B-
19 11 of this code; and

20 (5) Fail to reclaim the real property in accordance with
21 the best management practices set forth by the Division of
22 Forestry and the committee established in §19-1B-7(h) of
23 this code.

24 (b) Criminal and civil penalties. — A person who
25 violates any provision of this section is guilty of a
26 misdemeanor and, upon conviction, shall be: (1) Fined not
27 less than \$250 nor more than \$500 for the first offense; (2)
28 fined not less than \$500 nor more than \$1,000 for a second
29 offense; (3) fined not less than \$1,000 nor more than \$5,000,
30 or confined in jail not more than 30 days, or both, for a third
31 or subsequent offense. In addition to fines and costs, a
32 person or entity convicted of a violation of this section shall
33 pay a \$500 civil penalty to the division within 60 days. The
34 civil penalty shall be collected by the court in which the
35 person is convicted and forwarded to the State Treasurer for
36 deposit in the Division of Forestry Timber Operations
37 Enforcement Fund (3082) for use in administering the
38 provisions of this article.

39 (c) Each day that a person is in violation of this section
40 constitutes a separate criminal and civil offense.

41 (d) In addition to any other law-enforcement agencies
42 that have jurisdiction over criminal violations, the following
43 individuals who, as a part of their official duties, are
44 authorized by the Director of the Division of Forestry to
45 inspect timbering operations are also authorized to issue
46 citations for any of the listed violations in this article that
47 they have witnessed or confirmed through evidence thereof:

48 (1) Any forester;

49 (2) Any forest technician;

50 (3) Any forestry employee who has a two-year or four-
51 year higher education degree in the field of forestry; or

52 (4) Any forestry employee that is accompanied by a
53 forestry employee with a two-year or four-year higher
54 education degree in forestry.

55 The limited authority granted to employees of the
56 Division of Forestry to issue citations to enforce the
57 provisions of this section does not include the power to
58 place any individual or person under arrest except in the
59 case of a third offense misdemeanor violation as defined in
60 subsection (b) of this section.



CHAPTER 9

**(Com. Sub. for S. B. 496 - By Senators Sypolt, Smith
and Maroney)**

[Passed March 8, 2019; in effect from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to repeal §16-7-5a of the Code of West Virginia, 1931, as amended; to amend and reenact §16-7-5 of said code; and to amend said code by adding thereto a new article, designated §19-11E-1, §19-11E-2, §19-11E-3, §19-11E-4, §19-11E-5, §19-11E-6, §19-11E-7, §19-11E-8, §19-11E-9, §19-11E-10, §19-11E-11, §19-11E-12, §19-11E-13, §19-11E-14, §19-11E-15, §19-11E-16, and §19-11E-17, all relating generally to transferring authority to regulate milk from the Department of Health and Human Resources to the Department of Agriculture; transferring authority to regulate milk and milk products effective July 1, 2019; explaining purpose and scope of article; defining terms; requiring milk producers and those handling or transporting milk or milk products to have and maintain permits; establishing procedure for obtaining permits; mandating certified inspectors of milk production facilities maintain valid licenses; establishing milk and milk product labeling standards; defining “adulteration”;

describing authority and duties of Commissioner of Department of Agriculture regarding milk and milk products; listing prohibited acts; establishing grounds and procedure for suspension, revocation, or denial of permits or licenses; providing for right of hearing and appeal by persons aggrieved by actions taken pursuant to article; establishing criminal penalties for violation of article or rules promulgated thereunder; establishing civil penalties for violation of article or rules promulgated thereunder; allowing commissioner to promulgate rules permitting consent decrees or negotiated settlements of civil penalties; establishing that fees received pursuant to article are to be deposited into Department of Agriculture's fees account; permitting commissioner to enter into agreements with public or private entities to carry out provisions of the article; protecting trade secrets from disclosure; providing exception; establishing orderly transition of milk regulatory operations to Department of Agriculture; and mandating that Department of Health and Human Resources' legislative rules regulating milk remain in effect until July 1, 2020, or until earlier superseded by Department of Agriculture regulations.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 7. PURE FOOD AND DRUGS.

§16-7-5. Regulations by state Bureau for Public Health as to milk and milk products.

1 The West Virginia Bureau for Public Health shall adopt
2 regulations to provide clean and safe milk and fresh milk
3 products and, when promulgated, these regulations shall be
4 the minimum requirements to be enforced by local health
5 authorities throughout the state: *Provided*, That except in
6 any case where the milk or milk product involved creates,
7 or appears to create, an imminent hazard to the public
8 health, or in any case of a willful refusal to permit an
9 authorized inspection, that any regulations promulgated by

10 the Bureau for Public Health shall provide that prior to any
11 suspension or revocation of a permit issued to any dairy
12 farm, milk plant, receiving station, transfer station, and
13 distribution station, the holder of such permit shall be served
14 with a written notice to suspend or revoke such permit,
15 which notice shall specify with particularity the violations
16 in question and afford the holder reasonable opportunity to
17 correct such violations: *Provided, however,* That the
18 proposed order to deny, suspend, or revoke a permit may
19 not be effective until notice in writing has been delivered to
20 the holder of such permit who shall have 48 hours therefrom
21 in which to make application to the county health officer for
22 a hearing thereon. The county health officer shall, within 72
23 hours of receipt of such application, give a notice in writing
24 to the holder of such permit setting forth the time and place
25 of the hearing and proceed to a hearing to ascertain the facts
26 of such violation and upon evidence presented at the hearing
27 shall affirm, modify, or rescind the proposed order to
28 suspend. A copy of the regulations shall be furnished to the
29 Commissioner of Agriculture for his or her guidance in
30 performing any duties with relation to milk and milk
31 products imposed on him or her by law.

32 Effective July 1, 2019, the Bureau for Public Health
33 may no longer adopt or enforce regulations to provide clean
34 and safe milk and fresh milk products. Effective July 1,
35 2019, all authority to regulate milk and milk products shall
36 be transferred to the Department of Agriculture.

§16-7-5a. Joint Task Force on Milk Rules and Regulations.

1 [Repealed.]

CHAPTER 19. AGRICULTURE.

ARTICLE 11E. MILK AND MILK PRODUCTS.

§19-11E-1. Purpose and scope.

1 In 2018, the Legislature created the Joint Task Force on
2 Milk Rules and Regulations in response to concerns about

3 current regulation of the dairy industry in West Virginia.
4 The Joint Task Force heard from, and collected data and
5 other information from, dairy farmers, industry
6 representatives, and regulators from West Virginia, other
7 states, and the federal government. Following its review of
8 the collected information, the Joint Task Force concluded
9 that potential benefits and economies of scale would best be
10 realized by transferring some or all authority to promulgate
11 milk rules and regulations from the Department of Health
12 and Human Resources to the Department of Agriculture.

13 It is the purpose of this article to establish the authority
14 of the West Virginia Department of Agriculture to regulate
15 milk and milk products within the state. It is the further
16 purpose of this article to ensure that milk and milk products
17 produced, manufactured, or sold in West Virginia are safe,
18 while also ensuring that regulation is done in such a way as
19 to foster the stability and growth of the dairy industry in
20 West Virginia.

21 It is the intent of the Legislature that this article regulate
22 the production, transportation, and sale of milk and milk
23 products; confer powers and impose duties upon the
24 Commissioner of Agriculture; prescribe penalties; and
25 provide for the enforcement thereof.

26 Furthermore, except where otherwise indicated, it is the
27 intent of the Legislature that this article substantially
28 conform with the federal regulations promulgated under the
29 authority of the United States Secretary of Health and
30 Human Services in order to provide for the movement of
31 milk and milk products in interstate and intrastate
32 commerce with a minimum of economic barriers.

§19-11E-2. Definitions.

1 “Adulterated” means milk or the products manufactured
2 from milk meeting one or several of the conditions listed in
3 §19-11E-7 of this code.

4 “Clean” means the condition where no residue remains
5 on a surface that will, or is likely to, cause adulteration or
6 other contamination.

7 “Commissioner” means the Commissioner of
8 Agriculture of the State of West Virginia or his or her duly
9 authorized agent.

10 “Distribute” means the act of transporting, holding for
11 sale, offering for sale, selling, bartering, parceling out,
12 giving, or otherwise disposing of milk.

13 “Embargo” means an order to withdraw milk from
14 distribution. An embargo shall detain such milk or milk
15 product and prohibit the transportation or distribution of
16 milk as provided in §19-11E-8 of this code.

17 “Manufacture” means pasteurizing, ultrapasteurizing,
18 formulating, or compounding milk; or packaging or
19 preparing said product for distribution; or other methods of
20 preparing milk for consumption.

21 “Milk” means the lacteal secretion, practically free from
22 colostrum, obtained by the complete milking of one or more
23 healthy mammals. The term may include the components of
24 milk, including cream. For purposes of this article, the term
25 “milk” does not include raw milk.

26 “Milk producer” means any person who operates a dairy
27 farm and who provides, sells, or offers milk for sale.

28 “Person” means any individual, partnership,
29 association, fiduciary, firm, company, corporation, or any
30 organized group of persons whether incorporated or not.
31 The term “person” extends to the agents, servants, officers,
32 and employees of the person.

33 “Receiving station” means any place, premises, or
34 establishment where milk in unpackaged form is received,
35 collected, handled, stored, or cooled and prepared for
36 further transporting.

37 “Transport” means the movement of milk or milk
38 products from one facility to another in a manner that
39 maintains adequate temperatures and protects the product
40 from freezing temperatures, exposure to the sun, and from
41 sources of contamination.

42 “Transfer station” means any place, premises, or
43 establishment where milk is transferred directly from one
44 transport tank to another.

45 “Transport tank” means any tank which is used for the
46 pickup of milk or the transportation of milk to or from any
47 milk producer, dairy plant, receiving station, or transfer
48 station.

§19-11E-3. Department to regulate milk and milk products.

1 Effective July 1, 2019, the Department of Agriculture
2 shall be responsible for regulating all matters addressed in
3 the Grade “A” Pasteurized Milk Ordinance issued by the
4 federal Food and Drug Administration. This includes, but is
5 not limited to, inspection of milk production facilities,
6 inspection of facilities making single-use containers for
7 dairy products, collection and testing of milk samples, and
8 training and certification of inspectors.

§19-11E-4. Milk producer permits.

1 (a) A person may not sell milk, milk products, or
2 manufactured dairy products within this state without
3 having a current, valid permit from the Commissioner of
4 Agriculture.

5 (b) A separate permit shall be obtained for each milk
6 plant, milk producer, milk distributor, receiving station,
7 transfer station, bulk tank unit, and milk tank truck cleaning
8 facility.

9 (c) Permits are not transferable with respect to persons
10 or locations.

11 (d) Permits shall be applied for at least 30 days before
12 the date that the current permit expires or within 30 days of
13 the date that the person intends to engage in business.
14 Applications for all permits shall be made on forms supplied
15 by the commissioner and provide such information as may
16 be considered reasonably necessary by the commissioner.
17 All applications shall be accompanied by an application fee.
18 A penalty shall be added to all permits that are not applied
19 for or renewed within the time limits set forth in this
20 subsection.

21 (e) Permits shall be posted prominently at the place of
22 operation.

23 (f) Within 30 days of receiving a complete application
24 for an initial permit, the commissioner will inspect the
25 applicant's operation to determine whether it meets the
26 standards set forth by this code and rules promulgated
27 pursuant thereto that would be applicable if the applicant
28 received the permit applied for. If the applicant satisfies
29 those requirements, the commissioner shall issue the permit.

30 (g) Permits shall be valid for one year.

§19-11E-5. Licenses.

1 (a) Licenses shall be issued by the commissioner to
2 certified inspectors of milk production facilities. Licenses
3 are not transferable.

4 (b) Applications for licenses shall be made on forms
5 supplied by the commissioner and shall provide such
6 information as may be considered reasonably necessary by
7 the commissioner for the administration of this article.

8 (c) Licenses shall expire on June 30 following the date
9 of issue. License renewals shall be applied for at least 15
10 days previous to the date when the current license expires.
11 The commissioner may assess a penalty for licenses that are
12 not applied for or renewed within this time limit.

§19-11E-6. Labeling.

1 (a) All packages of milk or milk products shall have a
2 label upon or affixed to the package. The label shall be
3 legible and of a print size and style easily readable by the
4 ordinary citizen. The information required in this section
5 shall be on each label and shall be stated in English.

6 (b) The label shall contain the following information:

7 (1) The name of the product;

8 (2) The quantity of the contents;

9 (3) The name and address of the manufacturer, packer,
10 or distributor: *Provided*, That the manufacturer's plant code
11 or name and address shall always appear on the label for
12 Grade "A" products; and

13 (4) Such other information as the commissioner shall
14 require by rule.

§19-11E-7. Adulteration.

1 Any milk or any milk products are considered
2 adulterated within the meaning of this article if:

3 (1) They bear or contain any poisonous or deleterious
4 substance or compound in a quantity which may render it
5 injurious to health;

6 (2) They bear or contain any added poisonous or
7 deleterious substance for which no safe tolerance has been
8 established by state or federal law or regulation or which is
9 found in the product in excess of an established tolerance;

10 (3) They are or have been produced, transported, or held
11 under unsanitary conditions;

12 (4) They contain any substance added thereto so as to
13 make them appear better or of a greater value than they are;
14 or

15 (5) They meet or have met other conditions of
16 adulteration as established by rule.

§19-11E-8. Authority and duties of the commissioner.

1 The commissioner has the power and duty to:

2 (1) Propose rules for legislative approval in accordance
3 with §29A-3-1 *et seq.* of this code, including adopting with
4 any necessary modifications the Grade “A” Pasteurized
5 Milk Ordinance promulgated by the Food and Drug
6 Administration;

7 (2) Adopt, promulgate, and enforce other rules for
8 legislative approval in accordance with §29A-3-1 *et seq.* of
9 this code as necessary to carry out the purpose of this article;

10 (3) Have access to and enter at all reasonable times all
11 places where frozen desserts or imitation frozen desserts are
12 manufactured, stored, held, transported, distributed, or used
13 in the state and where records, papers, or documents relating
14 to these transactions are kept;

15 (4) Inspect and photograph all places where milk is
16 manufactured, packaged, stored, held, transported, or
17 distributed; inspect, audit, and copy records and papers
18 relating to the manufacturing, distribution, sampling,
19 testing, and sale of milk; examine measuring and testing
20 apparatus; and examine equipment used in manufacturing
21 and transportation of milk;

22 (5) Sample milk, including, but not limited to,
23 ingredients and packages that are used in the manufacture
24 of these products and may open any package containing or
25 believed to contain any milk or milk product or an
26 ingredient to be used in the manufacture of milk or a milk
27 product for the purpose of inspecting and sampling;

28 (6) Issue, suspend, revoke, or deny permits;

29 (7) Collect fees and expend moneys under the terms of
30 this article;

31 (8) Collect evidence, including samples, of the
32 condition of equipment, holding tanks, storage rooms, and
33 vehicles used, or intended to be used, in the processing,
34 packaging, transporting, or holding of milk or milk
35 products;

36 (9) Examine the labels and labeling of milk and milk
37 products;

38 (10) Issue embargoes for any milk or milk product
39 which is or is believed to be adulterated, misbranded, or that
40 is not in compliance with this article and to cause the
41 manufacturing and distributing of same to cease: *Provided,*
42 That nothing in this article may be construed as requiring
43 the commissioner to issue embargoes for minor violations
44 of this article when he or she believes that a written notice
45 of violation will serve the public interest:

46 (A) When an embargo is issued, the commissioner shall
47 affix to such product or manufacturing device in an
48 appropriate manner a tag or other marking giving warning
49 that such product is under embargo;

50 (B) The commissioner shall give written notice to the
51 custodian of the product or process under embargo
52 describing the violation and stating that the product is
53 prohibited from being sold, offered for sale, exposed for
54 sale, or distributed and is ordered to be held on the premises
55 and, further, that all manufacturing processes for this
56 product shall cease until the embargo is released. This
57 notice shall notify the custodian of the right to request an
58 immediate hearing under the rules adopted by the
59 commissioner;

60 (C) The commissioner shall take action to seize and
61 condemn any product that cannot be brought into

62 compliance with this article and the rules issued under same
63 within 90 days of notice to the custodian of the product;

64 (D) The commissioner may issue an embargo against a
65 perishable product even if the practical result is to bring
66 about the involuntary disposal of the product. The
67 commissioner shall exercise this power using all reasonable
68 means to determine if the product is adulterated or otherwise
69 not in compliance with this article in as short a time frame
70 as possible and shall promptly lift the embargo order if the
71 product is found to be in compliance with this article;

72 (11) Approve sampling and testing methods, and
73 evaluate and approve official laboratories;

74 (12) Obtain from any state court an order directing any
75 person to submit to inspection and sampling subsequent to
76 the refusal of any person to allow inspection and sampling;

77 (13) Conduct hearings as provided by this article; and

78 (14) Assess civil penalties and refer violations to a court
79 of competent jurisdiction: *Provided*, That the commissioner
80 is not required to report for prosecution minor violations of
81 the article when he or she believes that the public interest
82 will be best served by a suitable notice in writing.

§19-11E-9. Prohibited acts.

1 No person may:

2 (1) Have in his or her possession with the intent to sell,
3 transport, or manufacture any milk which is adulterated
4 within the meaning of this article;

5 (2) Interfere with or prohibit the commissioner from
6 performing the duties of his or her office;

7 (3) Fail to comply with the provisions of an embargo
8 order issued under this article;

9 (4) Fail to comply with the provisions of a revocation,
10 suspension, or denial order issued under this article;

11 (5) While operating in any official capacity, obtain any
12 information under the provisions of this article that would
13 be considered trade secrets regarding the quality, source,
14 and disposition of milk, and use this information for his or
15 her own personal gain;

16 (6) Sell milk or milk products, where required, without
17 a valid permit as required by the provisions of this article;

18 (7) Conduct inspections of milk production facilities for
19 the purpose of certifying compliance with this article
20 without a valid inspector license, and perform those duties
21 in a dishonest or incompetent manner, or falsify the records
22 thereof;

23 (8) Sell, offer for sale, or expose for sale any milk that
24 is from a herd that does not meet the requirements for
25 animal health as set by rule under this article;

26 (9) Represent an imitation dairy product to be a milk
27 product;

28 (10) Conduct a test to determine the identity, quality,
29 purity, grade, or quantity of a dairy product in a manner that
30 is not in accordance with the Pasteurized Milk Ordinance;
31 or

32 (11) Alter or destroy the results of a test conducted to
33 determine the identity, quality, purity, grade, or quantity of
34 a dairy product.

§19-11E-10. Suspension, revocation, or denial of permits or licenses.

1 (a) The commissioner may deny any application for a
2 permit, license, or certificate whenever the permit, license,
3 or certificate has been applied for fraudulently, the applicant
4 has grossly interfered with the duties of the commissioner,

5 the applicant is determined to be not in compliance with or
6 not able to comply with this article, or the applicant has not
7 otherwise satisfied the requirements of this article.

8 (b) The commissioner may suspend a permit, license, or
9 certificate whenever a health hazard exists, the permit,
10 license, or certificate has been obtained fraudulently, the
11 holder has grossly interfered with the duties of the
12 commissioner, or it is determined that the permit, license, or
13 certificate holder is dishonest, deceitful, incompetent, or not
14 in compliance with, or is unable to comply, with this article.
15 A person whose permit, license, or certificate has been
16 suspended shall discontinue operations covered by the
17 permit, license, or certificate during the period of the
18 suspension. The commissioner may issue a summary
19 suspension in cases where violations of this article
20 constitute a hazard to the public health, safety, or welfare
21 where the public interest requires immediate action.

22 (1) Except for summary suspensions, the commissioner
23 or his or her designee shall give written notice to the
24 person(s) affected by the pending suspension, stating that he
25 or she contemplates suspension of the permit, license, or
26 certificate and giving reasons therefor. The suspension
27 notice shall appoint a time and place for hearing and shall
28 be mailed by certified mail to the business address of the
29 permit, license, or certificate holder at least 10 days before
30 the date set for the hearing. The commissioner shall review
31 the evidence presented at the hearing prior to issuing his or
32 her decision.

33 (2) All summary suspensions shall be followed by a
34 notice of suspension, the reasons therefor, and an
35 opportunity for a hearing in accordance with this article.

36 (3) At the end of the period of suspension, the permit,
37 license, or certificate holder may resume operations without
38 reapplication for a permit, license, or certificate.

39 (c) The commissioner may revoke any permit, license,
40 or certificate issued under this article whenever a health
41 hazard exists, the permit, license, or certificate has been
42 obtained fraudulently, the holder has grossly interfered with
43 the duties of the commissioner, or it is determined that the
44 holder is dishonest, deceitful, incompetent, or not in
45 compliance with, or is unable to comply with, this article.
46 Any person whose permit, license, or certificate has been
47 revoked shall immediately discontinue all operations
48 covered under the permit, license, or certificate.

49 (1) Before revoking any permit, license, or certificate,
50 the commissioner shall give written notice to the persons
51 affected, stating that the revocation of the permit, license, or
52 certificate is being contemplated and giving reasons
53 therefor. The revocation notice shall appoint a time and
54 place for hearing and shall be mailed by certified mail to the
55 business address of the permit, license, or certificate holder
56 at least 10 days before the date set for the hearing. The
57 commissioner shall review the evidence presented at the
58 hearing prior to issuing his decision.

59 (2) At the end of the period of revocation a new permit,
60 license, or certificate may not be issued without the filing of
61 an application, payment of the required fee, and compliance
62 with all conditions that the commissioner shall require for
63 the reissuing of such permit, license, or certificate.

64 (d) Whenever the commissioner suspends or revokes
65 any permit, license, or certificate based on a health hazard,
66 he or she shall contact the county health officer, the Bureau
67 for Public Health, and the federal Food and Drug
68 Administration for the county in which the health hazard
69 exists.

§19-11E-11. Hearings and appeals.

1 (a) Any person aggrieved by any action taken under this
2 article shall have the opportunity for a hearing before the

3 commissioner under the rules promulgated by the
4 commissioner.

5 (b) Hearings shall be conducted according to procedures
6 set forth by rule.

7 (c) All the testimony and evidence at a hearing shall be
8 recorded by mechanical means, which may include the use
9 of tape recordings. The mechanical record shall be
10 maintained for 90 days from the date of the hearing and a
11 transcript shall be made available to the aggrieved party.

12 (d) Any party who feels aggrieved of the suspension,
13 revocation, or denial order may appeal within 60 days to the
14 circuit court of the county in which the person's principal
15 place of business is located.

**§19-11E-12. Criminal penalties; civil penalties; negotiated
agreements.**

1 (a) Any person violating any provision of this article or
2 rules adopted hereunder is guilty of a misdemeanor and,
3 upon conviction thereof, shall be fined not less than \$100
4 nor more than \$500 for the first offense, and for the second
5 or subsequent offense shall be fined not less than \$500 nor
6 more than \$1,000, or confined in jail not more than six
7 months, or both fined and confined. Magistrates have
8 concurrent jurisdiction with circuit courts to enforce the
9 provisions of this article.

10 (b) Any person violating a provision of this article or
11 rules adopted hereunder may be assessed a civil penalty by
12 the commissioner. In determining the amount of any civil
13 penalty, the commissioner shall give due consideration to
14 the history of previous violations of any person, the
15 seriousness of the violation, including any irreparable harm
16 to the environment, any hazards to the health and safety of
17 the public, and any economic damages to the public and the
18 demonstrated good faith of any person charged in
19 attempting to achieve compliance with this article before
20 and after written notification of the violation.

21 (1) The commissioner may assess a civil penalty of up
22 to \$1,000 for any violation.

23 (2) The civil penalty is payable to the State of West
24 Virginia and is collectible in any manner now or hereafter
25 provided for collection of debt. If any person liable to pay
26 the civil penalty neglects or refuses to pay the same, the
27 amount of the civil penalty, together with interest at 10
28 percent, is a lien in favor of the State of West Virginia upon
29 the property, both real and personal, of such a person after
30 the same has been entered and docketed to record in the
31 county where the property is situated. The clerk of the
32 county, upon receipt of the certified copy of the lien, shall
33 enter it to record without requiring the payment of costs as
34 a condition precedent to recording.

35 (c) Notwithstanding any other provision of law to the
36 contrary, the commissioner may promulgate and adopt rules
37 which permit consent agreements or negotiated settlements
38 for the civil penalties assessed as a result of violation of the
39 provisions of this article.

40 (d) Nothing in this article may be construed as requiring
41 the commissioner or his or her representative to report for
42 prosecution as a result of minor violations of the article
43 when the commissioner believes that the public interest will
44 be best served by a suitable notice of warning in writing.

45 (e) Upon application by the commissioner, the circuit
46 court of the county in which the violation is occurring, has
47 occurred, or is about to occur, as the case may be, may grant
48 a temporary or permanent injunction restraining any person
49 from violating or continuing to violate any of the provisions
50 of this article or any rule promulgated under this article,
51 notwithstanding the existence of other remedies at law. Any
52 such injunction shall be issued without bond.

53 (f) No state court may allow for the recovery of damages
54 for any administrative action taken, if the court finds that
55 there was a probable cause for the action.

56 (g) The prosecuting attorney of the county in which the
57 violation occurred shall represent the Department of
58 Agriculture to institute proceedings and to prosecute the
59 person charged with a violation.

§19-11E-13. Payment of fees.

1 All fees, penalties, or other moneys collected by the
2 commissioner under the provisions of this article shall be
3 paid into the Department of Agriculture's fees account.

§19-11E-14. Cooperation with other entities.

1 The commissioner may cooperate with and enter into
2 agreements with governmental agencies of this state, other
3 states, agencies of the federal government, agencies of
4 foreign governments, and private entities in order to carry
5 out the purpose and provisions of this article.

§19-11E-15. Confidentiality of trade secrets.

1 The commissioner may not make public information
2 which contains or relates to trade secrets, commercial, or
3 financial information obtained from a person, or privileged
4 or confidential information: *Provided*, That when revealing
5 the information is necessary to carry out the provisions of
6 this article, this information may be revealed, subject to a
7 protective order, to any federal, state, or local agency
8 consultant; or may be revealed, subject to a protective order,
9 at a closed hearing or in findings of fact issued by the
10 commissioner.

§19-11E-16. Dairy Advisory Board.

1 (a) The commissioner shall establish a Dairy Advisory
2 Board within the Department of Agriculture. The purpose
3 of that board is to advise the commissioner with respect to
4 the status of the dairy industry in West Virginia, obstacles
5 to manufacture, processing, and sale of milk and milk
6 products, recommendations with respect to changes in
7 statutes and regulation, changes in technology and

8 processes utilized by the dairy industry, and other
9 hindrances to growth of the industry in West Virginia.

10 (b) The commissioner shall, by rule, establish minimum
11 requirements and qualifications for the members of the
12 advisory board.

**§19-11E-17. Transfer of milk regulation authority from
Department of Health and Human Resources to
Department of Agriculture.**

1 (a) Effective July 1, 2019, authority for the regulation,
2 including enforcement, of Grade "A" milk is hereby
3 transferred to the commissioner from the Department of
4 Health and Human Resources.

5 (b) Prior to July 1, 2019, the commissioner and the
6 Department of Health and Human Resources shall enter into
7 an agreement to provide for the orderly transition of
8 regulatory operations from the Department of Health and
9 Human Resources to the commissioner. Said agreement
10 shall provide:

11 (1) For the transfer of records and equipment related to
12 the milk regulation program to the commissioner;

13 (2) For the continued provision of services by staff of
14 the Department of Health and Human Resources to the
15 commissioner under the terms of the agreement;

16 (3) For transition, upon notice to Department of Health
17 and Human Resources, of functions from the Department of
18 Health and Human Resources to the commissioner; and

19 (4) For the completion of the transfer of all
20 responsibilities from the Department of Health and Human
21 Resources to the commissioner no later than December 31,
22 2019.

23 (c) During a period from July 1, 2019, to December 31,
24 2019, the Department of Health and Human Resources shall

25 cooperate fully with the commissioner to ensure a smooth
26 transition of authority, knowledge, and resources to
27 guarantee that milk regulation in West Virginia suffers no
28 gap or failure in regulation.

29 (d) All legislative rules issued by the Department of
30 Health and Human Resources pursuant to its authority to
31 regulate milk shall remain in effect until superseded by the
32 commissioner's regulations.



CHAPTER 10

(S. B. 627 - By Senator Sypolt)

[Passed March 8, 2019; in effect from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §19-1-11 of the Code of West Virginia, 1931, as amended, relating generally to the Rural Rehabilitation Loan Program; authorizing the Commissioner of Agriculture to utilize other governmental entities, in addition to the State Treasurer, to service the loan program; and exempting the loan program from having to utilize the State Agency for Surplus Property to dispose of repossessed items.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-11. Rural Rehabilitation Loan Program.

1 (a) The Rural Rehabilitation Loan Program is an
2 important tool for the Commissioner of Agriculture to
3 promote investment in the agricultural industry in the state.
4 Rules are needed for the loan program to remain viable.

5 (b) The commissioner shall propose emergency and
6 legislative rules for approval in accordance with §29A-3-1
7 *et seq.* of this code. The rules shall, at a minimum:

8 (1) Establish minimum requirements and qualifications
9 for the loan committee, including the addition of public
10 members who have agricultural or business loan experience;

11 (2) Prohibit department employees and loan committee
12 members, and their immediate family members, from
13 receiving program loans;

14 (3) Establish minimum financial requirements for
15 receiving a program loan;

16 (4) Require loans to be used for agricultural or related
17 purposes;

18 (5) Require collateral sufficient to secure the loan;

19 (6) Establish policies for the application, applicable
20 interest rates, delinquencies, refinancing, collection
21 proceedings, collateral requirements, and other aspects of
22 the loan program;

23 (7) Require the department to advertise the loan
24 program to the public, including information on the
25 department's website and in the department's market
26 bulletin; and

27 (8) Transfer the servicing of the program loans to a
28 financial institution via competitive bid or to the State
29 Treasurer's office or other governmental entity.

30 (c) The commissioner shall file an annual report to the
31 Joint Committee on Government and Finance regarding the
32 loan program, including information about the loans
33 awarded, loans repaid, loans outstanding, interest rates,
34 delinquency and collections, and other pertinent data.

35 (d) The commissioner shall not be required to utilize
36 the services of the State Agency for Surplus Property for the
37 disposition of items purchased by participants in the loan
38 program and subsequently repossessed by the committee to
39 be sold in order to satisfy the balance of an outstanding loan.



CHAPTER 11

(S. B. 655 - By Senator Trump)

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

AN ACT to amend and reenact §19-21A-3 and §19-21A-4 of the Code of West Virginia, 1931, as amended, all relating to conservation districts generally; clarifying the authority of the State Conservation Committee to operate and administer a conservation grant program; providing financial assistance to conservation districts and others to promote approved conservation practices; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-3. Definitions.

1 Wherever used or referred to in this article, unless a
2 different meaning clearly appears from the context:

3 (1) “Agency of this state” means the government of this
4 state and any subdivision, agency, or instrumentality,
5 corporate or otherwise, of the government of this state.

6 (2) “Committee” or “State Conservation Committee”
7 means the agency created in §19-21A-4 of this code.

8 (3) “District” or “conservation district” means a
9 subdivision of this state, organized in accordance with the
10 provisions of this article, for the purposes, with the powers
11 and subject to the restrictions hereinafter set forth.

12 (4) “Grant” means the providing of grants for
13 conservation purposes pursuant to legislative rule.

14 (5) “Governing body” means the supervisors of any
15 conservation district, town or city, council, city
16 commission, county court, or body acting in lieu of a county
17 court, in this state, and the term “governmental division”
18 means any conservation district, town, city, or county in this
19 state.

20 (6) “Land occupier” or “occupier of land” means any
21 person, firm, or corporation who shall hold title to, or shall
22 be in possession of, any lands lying within a district
23 organized under the provisions of this article, whether as
24 owner, lessee, renter, or tenant.

25 (7) “Landowners” or “owners of land” means any
26 person or persons, firm, or corporation who holds title to
27 any lands lying within a district organized under the
28 provisions of this article.

29 (8) “Notice” means notice published as a Class II legal
30 advertisement in compliance with the provisions of §59-3-1
31 *et seq.* of this code and the publication area for the
32 publication is the county in which is located the appropriate
33 area. At any hearing held pursuant to such notice at the time
34 and place designated in the notice, adjournment may be
35 made, from time to time, without the necessity of renewing
36 the notice for the adjournment dates.

37 (9) “Petition” means a petition filed under the
38 provisions of §19-21A-5(a) of this code for the creation of
39 a district.

40 (10) “Soil conservation”, “erosion control”, or “erosion
41 prevention projects” means those projects that have been

42 established by federal agencies in cooperation with state
43 agencies for the purpose of demonstrating soil erosion
44 control and water conservation practices.

45 (11) "State" means the State of West Virginia.

46 (12) "Supervisor" means one of the members of the
47 governing body of a district, elected or appointed in
48 accordance with the provisions of this article.

49 (13) "United States" or "agencies of the United States"
50 means the United States of America, Natural Resources
51 Conservation Service of the United States Department of
52 Agriculture, and any other agency or instrumentality,
53 corporate or otherwise, of the United States of America.

54 (14) "Works of improvement" means such structures as
55 may be necessary or convenient for flood prevention or the
56 conservation, development, utilization, or disposal of water.

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

1 (a) The State Conservation Committee is continued. It
2 serves as an agency of the state and is to perform the
3 functions conferred upon it in this article. The committee
4 consists of the following 10 members:

5 (1) Four citizen members;

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

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

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

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

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

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

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

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

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

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

33 (e) The State Conservation Committee may employ an
34 administrative officer, technical experts, and other agents
35 and employees, permanent and temporary, as it requires.
36 The administrative officer and support staff shall be known
37 as the West Virginia Conservation Agency. The committee
38 shall determine their qualifications, duties, and
39 compensation. The committee may call upon the Attorney
40 General of the state for legal services it requires. It may
41 delegate to its chairperson, to one or more of its members,
42 or to one or more agents or employees powers and duties it
43 considers proper. The committee may secure necessary and
44 suitable office accommodations and the necessary supplies
45 and equipment. Upon request of the committee, for the
46 purpose of carrying out any of its functions, the supervising
47 officer of any state agency or of any state institution of

48 learning shall, insofar as may be possible, under available
49 appropriations and having due regard to the needs of the
50 agency to which the request is directed, assign or detail to
51 the committee members of the staff or personnel of the
52 agency or institution of learning and make special reports,
53 surveys, or studies required by the committee.

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

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

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

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

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

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

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

81 experience between the districts and cooperation between
82 them;

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

86 (4) Contract for services directly related to natural
87 disaster recovery and stream restoration related to flooding,
88 on an as needed basis;

89 (5) Comply with provisions of present and future federal
90 aid statutes and regulations, including execution of
91 contracts or agreements with, and cooperation in, programs
92 of the United States government and any of its proper
93 departments, bureaus, or agencies relating to natural disaster
94 response, natural disaster recovery, or stream restoration
95 related to flooding;

96 (6) Secure the cooperation and assistance of the United
97 States and any of its agencies and of agencies of this state in
98 the work of the districts;

99 (7) Disseminate information throughout the state
100 concerning the activities and programs of the conservation
101 districts and encourage the formation of the districts in areas
102 where their organization is desirable;

103 (8) Administer a conservation grant program that
104 provides financial assistance to conservation districts and
105 others to promote approved conservation projects;

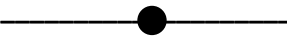
106 (9) Accept and receive donations, gifts, contributions,
107 grants, and appropriations in money, services, materials, or
108 otherwise from the United States or any of its agencies, from
109 the State of West Virginia, or from other sources and use or
110 expend the money, services, materials, or other
111 contributions in carrying out the policy and provisions of
112 this article, including the right to allocate the money,
113 services, or materials in part to the various conservation

114 districts created by this article in order to assist them in
115 carrying on their operations; and

116 (10) Obtain options upon and acquire by purchase,
117 exchange, lease, gift, grant, bequest, devise, or otherwise
118 any property, real or personal, or rights or interests in the
119 property; maintain, administer, operate, and improve any
120 properties acquired; receive and retain income from the
121 property and to expend the income as required for operation,
122 maintenance, administration, or improvement of the
123 properties or in otherwise carrying out the purposes and
124 provisions of this article; and sell, lease, or otherwise
125 dispose of any of its property or interests in the property in
126 furtherance of the purposes and the provisions of this article.
127 Money received from the sale of land acquired in the small
128 watershed program shall be deposited in the special account
129 of the State Conservation Committee and expended as
130 provided in this article.

131 (11) To promulgate emergency and legislative rules to
132 effectuate the provisions of this article as amended and
133 reenacted by the Legislature during the 2018 regular session
134 of the Legislature.

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



CHAPTER 12

(Com. Sub. for H. B. 2396 - By Delegates R. Thompson and Lovejoy)

[Passed March 8, 2019; in effect ninety days from passage.]
 [Approved by the Governor on March 22, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-37-1, §19-37-2, and §19-37-3, all relating to requiring all state-funded institutions to purchase a minimum of five percent of fresh produce, meat and poultry products from in-state producers if available; providing legislative findings and purpose; and establishing rule-making authority and enforcement authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 37. WEST VIRGINIA FRESH FOOD ACT.

§19-37-1. Legislative findings and purpose.

1 (a) According to the West Virginia Farm Bureau state
 2 schools alone currently purchase \$100 million of food from
 3 out-of-state sources.

4 (b) Locally grown food is healthier and more beneficial
 5 to the environment than food imported from other states and
 6 other countries.

7 (c) This article will:

8 (1) Stimulate the agricultural economy of the state,
 9 especially in its economically depressed areas, and allow
 10 small farmers to expand operations as well as act as an
 11 incentive to new people to begin farming;

12 (2) Encourage state-funded institutions to begin
13 growing their own produce, thus enabling people to learn
14 and practice agricultural techniques, as well as lowering
15 operational costs of those institutions; and

16 (3) Spur self-sufficiency and economic independence of
17 those who learn and engage in agricultural activities.

§19-37-2. State-funded institutions to purchase food from in-state sources; exception.

1 Beginning July 1, 2019, all state-funded institutions,
2 such as schools, colleges, correctional facilities,
3 governmental agencies and state parks, shall purchase a
4 minimum of five percent of its fresh produce, meat and
5 poultry products from in-state producers: *Provided*, That
6 such produce, meat and poultry products can be grown or is
7 available from in-state producers.

§19-37-3. Rule-making authority and enforcement.

1 The Commissioner of Agriculture shall be charged with
2 the enforcement of this article and shall have authority to
3 make and enforce rules and regulations for the
4 administration of this article.

●

CHAPTER 13

**(Com. Sub. for H. B. 2694 - By Delegates Howell, D.
Jeffries, Pack, Phillips, Sypolt, Hott, Cadle, Hamrick,
Graves, McGeehan and Pushkin)**

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

AN ACT to amend and reenact §19-12E-3, §19-12E-4, §19-12E-5, §19-12E-6, §19-12E-7, §19-12E-8, and §19-12E-9 of the

Code of West Virginia, 1931, as amended, and to amend said code by adding thereto two new sections, designated §19-12E-10 and §19-12E-11, all relating generally to the Industrial Hemp Development Act; adding and modifying definitions; updating code to reflect changes in federal law; clarifying that no person may grow, cultivate, possess, or process industrial hemp without a license from the Department of Agriculture; requiring certain documentation requested by the commissioner to be submitted by licensees; authorizing commissioner to submit plan for state regulation of industrial hemp to United States Department of Agriculture; requiring licensee to provide prior written consent for law enforcement to enter the premises; providing that a license is not necessary to possess, handle, transport, or sell hemp products and extracts; setting standards regarding sale of industrial hemp products; requiring plan to comply with federal law; providing for continued legality of hemp production in absence of submitted plan; providing for handling negligent violations; addressing handling of non-negligent violations; requiring notification of attorney general and law enforcement under certain circumstances; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12E. INDUSTRIAL HEMP DEVELOPMENT ACT.

§19-12E-3. Definitions.

1 As used in this article:

2 (a) “Cannabidiol” or “CBD” means the compound by
3 the same name derived from the hemp variety of the
4 cannabis sativa L. plant;

5 (b) “Commercial sales” means the sale of products in
6 the stream of commerce, at retail, wholesale, and online;

7 (c) “Commissioner” means the Commissioner of
8 Agriculture or his or her designee;

9 (d) “Cultivating” means planting, watering, growing,
10 and harvesting a plant or crop;

11 (e) “Department” means the West Virginia Department
12 of Agriculture and its employees;

13 (f) “Handling” means possessing or storing hemp plants
14 for any period of time on premises owned, operated, or
15 controlled by a person licensed to cultivate or process hemp.
16 “Handling” also includes possessing or storing hemp plants
17 in a vehicle for any period of time other than during its
18 actual transport from the premises of one licensed person to
19 cultivate or process industrial hemp to the premises of
20 another licensed person. “Handling” does not mean
21 possessing or storing finished hemp products;

22 (g) “Hemp” or “industrial hemp” means all parts and
23 varieties of the plant *Cannabis sativa* L. and any part of the
24 plant, including the seeds of the plant and all derivatives,
25 extracts, cannabinoids, isomers, acids, salts, and salts of
26 isomers, whether growing or not with no greater than 0.3%
27 tetrahydrocannabinol, or the THC concentration for hemp
28 defined in 7 U.S.C. § 5940, whichever is greater;

29 (h) “Hemp products” means all products derived from,
30 or made by, processing hemp plants or plant parts, that are
31 prepared in a form available for commercial sale;

32 (i) “Licensee” means an individual or business entity
33 possessing a license issued by the Department to grow,
34 handle, cultivate, or process hemp;

35 (j) “Marijuana” means all plant material from the genus
36 cannabis containing more than one percent
37 tetrahydrocannabinol or seeds of the genus capable of
38 germination;

39 (k) “Processing” means converting an agricultural
40 commodity into a marketable form; and

41 (l) “THC” means tetrahydrocannabinol.
42 Notwithstanding any other provision of this code to the
43 contrary, the THC found in industrial hemp shall not be
44 considered to be THC for the purposes of qualifying as a
45 controlled substance.

**§19-12E-4. Industrial hemp authorized as agricultural crop;
license required.**

1 (a) Industrial hemp is considered an agricultural crop in
2 this state if grown for the purposes authorized by the
3 provisions of this article. Upon meeting the requirements of
4 §19-12E-5 of this code, an individual in this state may plant,
5 grow, harvest, possess, process, sell or buy industrial hemp.

6 (b) A person shall not cultivate, handle, or process
7 industrial hemp in this state unless the person holds an
8 industrial hemp license issued by the department.

§19-12E-5. Industrial hemp – licensing.

1 (a) A person growing industrial hemp shall apply to the
2 commissioner for a license on a form prescribed by the
3 commissioner.

4 (b) The application for a license must include the name
5 and address of the applicant and the legal description and
6 global positioning coordinates of the land area to be used
7 for the production of industrial hemp.

8 (c) The commissioner shall require each first-time
9 applicant, and may establish requirements for other persons
10 involved with the industrial hemp program, to submit to a
11 state and national criminal history record check. The
12 criminal history record check shall be based on fingerprints
13 submitted to the West Virginia State Police or its assigned
14 agent for forwarding to the Federal Bureau of Investigation.

15 (1) The applicant shall meet all requirements necessary
16 to accomplish the state and national criminal history record
17 check, including:

- 18 (A) Submitting fingerprints; and
- 19 (B) Authorizing the board, the West Virginia State
20 Police, and the Federal Bureau of Investigation to use all
21 records submitted and produced for the purpose of
22 screening the applicant for a license.
- 23 (2) The results of the state and national criminal history
24 record check may not be released to or by a private entity
25 except:
- 26 (A) To the individual who is the subject of the criminal
27 history record check;
- 28 (B) With the written authorization of the individual who
29 is the subject of the criminal history record check; or
- 30 (C) Pursuant to a court order.
- 31 (3) The criminal history record check and related
32 records are not public records for the purposes of §29B-1-1
33 *et seq.* of this code.
- 34 (4) The applicant shall pay the actual costs of the
35 fingerprinting and criminal history record check.
- 36 (d) If the applicant has completed the application
37 process to the satisfaction of the commissioner, the
38 commissioner shall issue the license, which is valid until
39 December 31 of the year of application: *Provided*, That an
40 individual applying to renew a current license may continue
41 to operate under an existing license, as long as his or her
42 completed renewal application has been submitted to the
43 department on or before the deadline established by the
44 department.
- 45 (e) Any person seeking to grow, cultivate, or process
46 industrial hemp shall provide to the Department prior
47 written consent allowing the Department, State Police, and
48 other state and local law enforcement agencies to enter onto
49 all premises where industrial hemp is grown, cultivated,

50 processed, or stored to conduct physical inspections or
51 otherwise ensure compliance with the requirements of this
52 code and the legislative rules promulgated pursuant to this
53 code.

54 (f) Sale of industrial hemp products —

55 (1) Notwithstanding any provision of the code to the
56 contrary, a person need not obtain a license to possess,
57 handle, transport, or sell hemp products or extracts,
58 including those containing one or more hemp-derived
59 cannabinoids, including CBD.

60 (2) Hemp-derived cannabinoids, including CBD, are not
61 controlled substances or adulterants.

62 (3) Products containing one or more hemp-derived
63 cannabinoids, such as CBD, intended for ingestion are to be
64 considered foods, not controlled substances or adulterated
65 products.

66 (4) Applicable state agencies shall make available any
67 and all customary registrations to the processors and
68 manufacturers of hemp products.

69 (5) Retail sales of hemp products may be conducted
70 when the products and the hemp used in the products were
71 grown and cultivated legally in another state or jurisdiction
72 and meet the same or substantially the same requirements
73 for processing hemp products or growing hemp under this
74 article and rules promulgated under §19-2E-7 of this code.

75 (6) Notwithstanding any other provision of this code to
76 the contrary, derivatives of hemp, including hemp-derived
77 cannabidiol, may be added to cosmetics, personal care
78 products, and products intended for animal or human
79 consumption, and the addition is not considered an
80 adulteration of the products.

81 (7) Hemp and hemp products may be legally transported
82 across state lines, and exported to foreign nations, consistent

83 with U. S. federal law and laws of respective foreign
84 nations.

§19-12E-6. Industrial hemp production – notification.

1 (a) Every licensee shall file with the commissioner:

2 (1) Documentation showing that the seeds planted are
3 of a type and variety certified to contain no more than 0.3%
4 tetrahydrocannabinol;

5 (2) A copy of any contract to grow industrial hemp; and

6 (3) Any other document required to be submitted by the
7 commissioner.

8 (b) Each licensee shall notify the commissioner of the
9 sale or distribution of any industrial hemp grown by the
10 licensee, including, but not limited to, the name and address
11 of the person or entity receiving the industrial hemp and the
12 amount of industrial hemp sold.

§19-12E-7. Rule-making authority.

1 The commissioner shall propose legislative rules for
2 promulgation in accordance with §29A-3-1 *et seq.* of this
3 code that include, but are not limited to:

4 (1) Licensing persons who wish to grow, cultivate,
5 handle, or process industrial hemp;

6 (2) Sampling and testing of the industrial hemp to
7 determine tetrahydrocannabinol levels;

8 (3) Supervision of the industrial hemp during its growth
9 and harvest;

10 (4) Assessment of fees that are commensurate with the
11 costs of the commissioner's activities in licensing, testing,
12 and supervising industrial hemp production;

13 (5) The production and sale of industrial hemp;

14 (6) The production, sale, possession, handling, or
15 transport of hemp products and extracts, including those
16 containing one or more hemp-derived cannabinoids,
17 including CBD; and

18 (7) Any other rules and procedures necessary to carry
19 out the purposes of this article.

§19-12E-8. Disposition of fees.

1 All fees assessed as provided for in §19-12E-5 of this
2 code must be deposited with the state treasurer to the credit
3 of the “Agricultural Fees Fund” established by the
4 provisions of §19-1-4c of this code for the use of the
5 commissioner for administering and enforcing the
6 provisions of this article.

§19-12E-9. Defense for possession or cultivation of marijuana.

1 (a) It is a complete defense to a prosecution for the
2 possession or cultivation of marijuana pursuant to the
3 provisions of §60A-4-401 *et seq.* of this code that defendant
4 was growing industrial hemp pursuant to the provisions of
5 this article.

6 (b) This section is not a defense to a charge of criminal
7 sale or distribution of marijuana as defined in §60A-1-101
8 *et seq.* of this code which does not meet the definition of
9 industrial hemp.

§19-12E-10. State regulation of industrial hemp.

1 (a) The commissioner may submit to the Secretary of
2 the United States Department of Agriculture, for his or her
3 approval, a plan under which this state monitors and
4 regulates the production of industrial hemp. The plan shall
5 comply with the requirements of 7 U.S.C. § 1621 *et seq.* and
6 any other requirements established by the United States
7 Department of Agriculture.

8 (b) Nothing in this section prohibits the production of
9 industrial hemp in this state if the commissioner declines to
10 submit a plan, or if a submitted plan is not approved by the
11 United States Department of Agriculture in accordance with
12 other federal laws and regulations.

§19-12E-11. Violations; negligent violations; notice.

1 (a) A licensee in this state that does not comply with any
2 approved plan is subject to §19-12E-11(b) of this code if the
3 department determines the licensee has negligently violated
4 the state plan by:

5 (1) Failing to provide a legal description of the land on
6 which the licensee produces hemp;

7 (2) Failing to obtain a license or other required
8 authorization from the West Virginia Department of
9 Agriculture; or

10 (3) Producing industrial hemp containing more than
11 0.3% of tetrahydrocannabinol.

12 (b) A licensee described in subsection (a) of this section
13 shall comply with any requirements established by the
14 department to correct any negligent violation, including:

15 (1) A reasonable date by which the hemp producer shall
16 correct the negligent violation; and

17 (2) In the discretion of the commissioner, any
18 requirement that the licensee shall periodically report to the
19 department the licensee's compliance with the state plan for
20 at least two calendar years from the date of the negligent
21 violation.

22 (c) A licensee that negligently violates the provisions of
23 this article, legislative rules promulgated pursuant to this
24 article, or this state's approved plan authorized pursuant to
25 §19-12E-10 of this code three times in a five-year period, is

26 ineligible to produce hemp in this state for a period of five
27 years beginning on the date of the third violation.

28 (d) If the department determines that a licensee in this
29 state has intentionally violated the provisions of this article,
30 legislative rules promulgated pursuant to this article, or this
31 state's approved plan authorized pursuant to §19-12E-10 of
32 this code, the provisions of §19-12E-11(b) of this code shall
33 not apply to the violation and the department shall report the
34 licensee to:

35 (1) The attorney general;

36 (2) The sheriff of the county in which the hemp is being
37 grown; and

38 (3) The local detachment of the West Virginia State
39 Police.

40 (e) Absent a notification pursuant to subsection (d) of
41 this section, a licensee that negligently violates state laws or
42 rules is not subject to any criminal or civil enforcement
43 action by any state, county, or municipal government.



CHAPTER 14

**(Com. Sub. for H. B. 3007 - By Delegates Nelson,
Harshbarger, Cadle, Atkinson, Cooper, Pack and
Porterfield)**

[Passed March 5, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 19, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §19-1-3b, relating
to authorizing the Commissioner of Agriculture to require
background checks as a condition of employment; providing

legislative findings; describing background check procedure; making background check results confidential; providing exceptions; designating background checks and related documents not to be considered public records under chapter 29B of said code; prohibiting disqualification of applicant for criminal conviction not bearing rational nexus to employment category; barring consideration of crimes of moral turpitude in hiring; allowing reapplication after disqualification from employment; establishing procedure for individual obtaining preapplication determination if criminal record will disqualify individual from employment; and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-3b. Background checks as condition of employment.

1 (a) The commissioner may, as a condition of
2 employment, require an applicant for a position to submit to
3 a state and national criminal history record check. This
4 requirement is found not to be against public policy.

5 (b) The criminal history record check shall be based on
6 fingerprints submitted to the West Virginia State Police or
7 its assigned agent for forwarding to the Federal Bureau of
8 Investigation. The applicant shall meet all requirements
9 necessary to accomplish the state and national criminal
10 history record check, including:

11 (1) Submitting fingerprints for the purposes set forth in
12 this subsection; and

13 (2) Authorizing the board, the West Virginia State
14 Police and the Federal Bureau of Investigation to use all
15 records submitted and produced for the purpose of
16 screening the applicant for employment.

17 (c) The results of the state and national criminal history
18 record check may not be released to or by a private entity
19 except:

20 (1) To the individual who is the subject of the criminal
21 history record check;

22 (2) With the written authorization of the individual who
23 is the subject of the criminal history record check; or

24 (3) Pursuant to a court order.

25 (d) The criminal history record check and related
26 records are not public records for the purposes of chapter
27 29B of this code.

28 (e) The commissioner may not disqualify an applicant
29 for employment because of a prior criminal conviction that
30 has not been reversed unless that conviction is for a crime
31 that bears a rational nexus to the employment category.

32 (f) The commissioner may not use crimes involving
33 moral turpitude in making employment determinations.

34 (g) If an applicant is disqualified for employment
35 because of a criminal conviction that has not been reversed,
36 the commissioner shall afford the applicant the opportunity
37 to reapply for employment after the expiration of five years
38 from the date of conviction or date of release from the
39 penalty that was imposed, whichever is later, if the
40 individual has not been convicted of any other crime during
41 that period of time: *Provided*, That convictions for violent
42 or sexual offenses or offenses shall subject an individual to
43 a longer period of disqualification, to be determined by the
44 commissioner by rule.

45 (h) An individual with a criminal record who has not
46 previously applied for employment may petition the
47 commissioner at any time for a determination of whether the
48 individual's criminal record will disqualify the individual
49 from obtaining employment. This petition shall include
50 sufficient details about the individual's criminal record to
51 enable the commissioner to identify the jurisdiction where
52 the conviction occurred, the date of the conviction and the
53 specific nature of the conviction. The commissioner shall

54 inform the individual of his or her standing within 60 days
55 of receiving the petition from the applicant.

56 (i) The commissioner shall propose rules or
57 amendments to existing rules for legislative approval to
58 comply with the provisions of this section. These rules or
59 amendments to rules shall be proposed pursuant to the
60 provisions of §29A-3-1 *et seq.* of this code within the
61 applicable time limit to be considered by the Legislature
62 during its regular session in the year 2020.



CHAPTER 15

**(Com. Sub. for S. B. 511 - By Senators Trump and
Boso)**

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §60-1-5c; to amend and reenact §60-4-3b of said code; to amend and reenact §60-8-3 and §60-8-17 of said code; and to amend said code by adding thereto two new sections, designated §60-8-3a and §60-8-6b, all relating to wine production and wine sales generally; creating alternating wine proprietorships for wineries and farm wineries and setting forth requirements for the proprietorships; authorizing farm entities in proprietorships to manufacture and sell wine; authorizing certain groceries to sell wine through mobile applications and web-based internet sales with at-store pickup; clarifying tasting, sampling, and sale procedures and requirements for wineries and farm wineries; permitting wineries or farm wineries to sell wine for on-premises and off-premises consumption at festivals and fairs; establishing a wine club

license for festivals and fairs and setting forth requirements; permitting certain charitable events to auction wine bottles for off-premises consumption; defining terms; limiting number of charitable auction licenses; permitting the sale of wine in Division II and III college stadiums; authorizing wine specialty shops to obtain an additional license privilege to deliver wine with gift baskets and setting forth requirements; providing a 30-day requirement to issue or deny a completed license application; creating a reactivation fee for licensees that fail to timely file their renewal applications and pay their license fees; and authorizing the commissioner to propose rules for promulgation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5c. Alternating wine proprietorships; requirements and limitations.

1 (a) Notwithstanding the provisions of §60-1-5 of this
2 code, a licensed winery or farm winery may be a party to an
3 alternating wine proprietorship agreement subject to the
4 provisions of this section. As used in this section,
5 “alternating wine proprietorship agreement” means an
6 agreement between a licensed winery or farm winery and a
7 farm entity which allows the farm entity to use the premises
8 of the licensed farm winery to produce wine.

9 (b) For an alternating wine proprietorship agreement to
10 be lawful:

11 (1) The farm winery and the farm entity must be in
12 compliance with applicable state laws and rules
13 promulgated thereunder;

14 (2) The agreement must be between a licensed winery
15 or farm winery and a farm entity located and operating in
16 this state;

17 (3) The farm entity must produce agricultural products
18 containing sugar as certified by the Agriculture
19 Commissioner and required by law;

20 (4) Wines produced by the parties must be maintained
21 in separate bonded areas and shall not be comingled;

22 (5) The farm entity participating in the agreement must
23 separately meet all federal and state requirements for a
24 winery or farm winery;

25 (6) The farm entity party to the agreement may not
26 produce more than 50,000 gallons of wine and nonfortified
27 dessert wine;

28 (7) Wine produced by the farm entity party to an
29 agreement must be produced exclusively by natural
30 fermentation;

31 (8) If port, sherry, or madeira wines are produced by the
32 farm entity party to the agreement, a minimum of 25 percent
33 of the agricultural products used to make the wine must be
34 produced on the farm entity's property and no more than 25
35 percent of the agricultural products used may come from an
36 out-of-state source; and

37 (9) Port, sherry, or madeira wine produced by a party to
38 an alternating wine proprietorship agreement may not
39 exceed 22 percent alcohol by volume and must be matured
40 in wooden barrels or casks.

41 (c) The commissioner shall propose rules for
42 promulgation in accordance with §29A-3-1 *et seq.* of this
43 code necessary to effectuate the provisions of this section.

ARTICLE 4. LICENSES.

§60-4-3b. Winery and farm winery license to manufacture and sell.

1 (a) An operator of a winery or farm winery may offer
2 wine produced by the winery, farm winery, or a farm entity

3 authorized by §60-1-5c of this code for retail sale to
4 customers from the winery or farm winery for consumption
5 off the premises only. Except for free complimentary
6 samples offered pursuant to §60-6-1 of this code, customers
7 are prohibited from consuming any wine on the premises of
8 the winery, farm winery, or a farm entity authorized by §60-
9 1-5c of this code unless such winery, farm winery, or farm
10 entity has obtained a multi-capacity winery or farm winery
11 license: *Provided*, That a licensed winery or farm winery
12 may offer complimentary samples per this subsection of
13 wine manufactured by that licensed winery or farm winery
14 for consumption on the premises only on Sundays
15 beginning at 10:00 a.m. in any county in which the same has
16 been approved as provided in §7-1-3ss of this code.

17 (b) Complimentary samples allowed by the provisions
18 of this section may not exceed two fluid ounces and no more
19 than three such samples may be given to a patron in any one
20 day.

21 (c) Complimentary samples may be provided only for
22 on-premises consumption.

23 (d) A winery, farm winery, or farm entity pursuant to
24 §60-1-5c of this code may offer for retail sale from their
25 licensed premises sealed original container bottles of wine
26 for off-premises consumption only.

27 (e) A winery, farm winery, or farm entity licensed
28 pursuant to §60-1-5c of this code holding a multicapacity
29 license and a private wine restaurant license may offer wine
30 by the drink or glass in a private wine restaurant located on
31 the property of the winery, farm winery, or farm entity
32 licensed pursuant to §60-1-5c of this code.

33 (f) Every licensed winery or farm winery shall comply
34 with the provisions of §60-3-1 *et seq.*, §60-4-1 *et seq.*, and
35 §60-8-1 *et seq.* of this code as applicable to wine retailers,
36 wineries, and suppliers when properly licensed in such
37 capacities.

38 (g) (1) The winery or farm winery shall pay all taxes and
39 fees required of licensed wine retailers and meet applicable
40 licensing provisions as required by this chapter and by rules
41 promulgated by the commissioner.

42 (2) Each winery or farm winery acting as its own
43 supplier shall submit to the Tax Commissioner the liter tax
44 for all sales at the winery or farm winery each month, as
45 provided in §60-8-1 *et seq.* of this code.

46 (3) The five percent wine excise tax, levied pursuant to
47 §60-3-9d of this code or pursuant to §8-13-7 of this code,
48 may not be imposed or collected on purchases of wine in the
49 original sealed package for the purpose of resale in the
50 original sealed package if the final purchase of such wine is
51 subject to the excise tax or if the purchase is delivered
52 outside this state.

53 (4) No liter tax shall be collected on wine sold in the
54 original sealed package for the purpose of resale in the
55 original sealed package if a subsequent sale of such wine is
56 subject to the liter tax.

57 (5) This section shall not be interpreted to authorize a
58 purchase for resale exemption in contravention of §11-15-
59 9a of this code.

60 (h) A winery or farm winery may advertise a particular
61 brand or brands of wine produced by it and the price of the
62 wine is subject to federal requirements or restrictions.

63 (i) A winery or farm winery must maintain a separate
64 winery or farm winery supplier, retailer, and direct shipper
65 licenses when acting in one or more of those capacities and
66 must pay all associated license fees, unless such winery or
67 farm winery holds a license issued pursuant to the
68 provisions of §60-8-3(b)(12) of this code. A winery or farm
69 winery, if holding the appropriate licenses or a
70 multicapacity winery or farm winery license, may act as its
71 own supplier; retailer for off-premises consumption of its

72 wine as specified in §60-6-2 of this code; private wine
73 restaurant; and direct shipper for wine produced by the
74 winery or farm winery. All wineries must use a distributor
75 to distribute and sell their wine in the state, except for farm
76 wineries. No more than one winery or farm winery license
77 may be issued to a single person or entity and no person may
78 hold both a winery and a farm winery license. Wineries or
79 farm wineries may enter into alternating wine proprietorship
80 agreements pursuant to §60-1-5c of this code.

81 (j) For purposes of this section, terms will have the same
82 meaning as provided in §8-13-7 of this code.

ARTICLE 8. SALE OF WINES.

§60-8-3. Licenses; fees; general restrictions.

1 (a) No person may engage in business in the capacity of
2 a winery, farm winery, supplier, distributor, retailer, private
3 wine bed and breakfast, private wine restaurant, private
4 wine spa, or wine specialty shop without first obtaining a
5 license from the commissioner, nor shall a person continue
6 to engage in any activity after his or her license has expired,
7 been suspended, or revoked. No person may be licensed
8 simultaneously as a distributor and a retailer. No person,
9 except for a winery or farm winery, may be licensed
10 simultaneously as a supplier and a retailer. No person may
11 be licensed simultaneously as a supplier and a private wine
12 bed and breakfast, private wine restaurant, or a private wine
13 spa. No person may be licensed simultaneously as a
14 distributor and a private wine bed and breakfast, a private
15 wine restaurant, or a private wine spa. No person may be
16 licensed simultaneously as a retailer and a private wine bed
17 and breakfast, a private wine restaurant, or a private wine
18 spa.

19 (b) The commissioner shall collect an annual fee for
20 licenses issued under this article as follows:

21 (1) One hundred fifty dollars per year for a supplier's
22 license;

23 (2) Two thousand five hundred dollars per year for a
24 distributor's license and each separate warehouse or other
25 facility from which a distributor sells, transfers, or delivers
26 wine shall be separately licensed and there shall be collected
27 with respect to each location the annual license fee of
28 \$2,500 as provided in this subdivision;

29 (3) One hundred fifty dollars per year for a retailer's
30 license;

31 (4) Two hundred fifty dollars per year for a wine
32 specialty shop license, in addition to any other licensing fees
33 paid by a winery or retailer holding a license. Except for the
34 amount of the license fee and the restriction to sales of
35 winery or farm winery wines, a winery, or farm winery
36 acting as a wine specialty shop retailer is subject to all other
37 provisions of this article which are applicable to a wine
38 specialty shop retailer as defined in §60-8-2 of this code;

39 (5) One hundred fifty dollars per year for a wine tasting
40 license;

41 (6) One hundred fifty dollars per year for a private wine
42 bed and breakfast license. Each separate bed and breakfast
43 from which a licensee sells wine shall be separately licensed
44 and there shall be collected with respect to each location the
45 annual license fee of \$150 as provided in this subdivision;

46 (7) Two hundred fifty dollars per year for a private wine
47 restaurant license. Each separate restaurant from which a
48 licensee sells wine shall be separately licensed and there
49 shall be collected with respect to each location the annual
50 license fee of \$250 as provided in this subdivision;

51 (8) One hundred fifty dollars per year for a private wine
52 spa license. Each separate private wine spa from which a
53 licensee sells wine shall be separately licensed and there
54 shall be collected with respect to each location the annual
55 license fee of \$150 as provided in this subdivision;

56 (9) One hundred fifty dollars per year for a wine
57 sampling license issued for a wine specialty shop under
58 subsection (n) of this section;

59 (10) No fee shall be charged for a special one-day
60 license under subsection (p) of this section or for a heritage
61 fair and festival license under subsection (q) of this section;

62 (11) One hundred fifty dollars per year for a direct
63 shipper's license for a licensee who sells and ships only
64 wine and \$250 per for a direct shipper's license who ships
65 and sells wine, nonfortified dessert wine, port, sherry, or
66 Madeira wines; and

67 (12) Three hundred dollars per year for a multicapacity
68 winery or farm winery license which enables the holder to
69 operate as a retailer, wine specialty shop, supplier, and
70 direct shipper without obtaining an individual license for
71 each capacity.

72 (c) The license period begins on July 1 of each year and
73 ends on June 30 of the following year and if granted for a
74 less period, the same shall be computed semiannually in
75 proportion to the remainder of the fiscal year.

76 (d) No retailer may be licensed as a private club as
77 provided by §60-7-1 *et seq.* of this code, except as provided
78 by subsection (k) of this section.

79 (e) No retailer may be licensed as a Class A retail dealer
80 in nonintoxicating beer as provided by §11-16-1 *et seq.* of
81 this code: *Provided*, That a delicatessen, a caterer, or party
82 supply store which is a grocery store as defined in §60-8-2
83 of this code and which is licensed as a Class A retail dealer
84 in nonintoxicating beer may be a retailer under this article:
85 *Provided, however*, That any delicatessen, caterer, or party
86 supply store licensed in both capacities must maintain
87 average monthly sales exclusive of sales of wine and
88 nonintoxicating beer which exceed the average monthly
89 sales of nonintoxicating beer.

90 (f) A wine specialty shop under this article may also
91 hold a wine tasting license authorizing the retailer to serve
92 complimentary samples of wine in moderate quantities for
93 tasting. Such wine specialty shop shall organize a wine
94 taster's club, which has at least 50 duly elected or approved
95 dues-paying members in good standing. Such club shall
96 meet on the wine specialty shop's premises not more than
97 one time per week and shall either meet at a time when the
98 premises are closed to the general public or shall meet in a
99 separate segregated facility on the premises to which the
100 general public is not admitted. Attendance at tastings shall
101 be limited to duly elected or approved dues-paying
102 members and their guests.

103 (g) A retailer who has more than one place of retail
104 business shall obtain a license for each separate retail
105 establishment. A retailer's license may be issued only to the
106 proprietor or owner of a bona fide grocery store or wine
107 specialty shop.

108 (h)(1) The commissioner may issue a license for the
109 retail sale of wine at any festival or fair which is endorsed
110 or sponsored by the governing body of a municipality or a
111 county commission. Such license shall be issued for a term
112 of no longer than 10 consecutive days and the fee for the
113 license shall be \$250 regardless of the term of the license.
114 The application for the license shall contain information
115 required by the commissioner and shall be submitted to the
116 commissioner at least 30 days prior to the first day when
117 wine is to be sold at the festival or fair.

118 (2) Notwithstanding subdivision (1) of this subsection,
119 if the applicant for the festival or fair license is the
120 manufacturer of said wine, a winery, or a farm winery as
121 defined in §60-1-5a of this code, and the event is located on
122 the premises of a winery or a farm winery, then the license
123 fee is \$50 per festival or fair.

124 (3) A licensed winery or a farm winery, which has the
125 festival or fair licensee's written authorization and approval

126 from the commissioner, may, in addition to or in
127 conjunction with the festival and fair licensee, exhibit,
128 conduct complimentary tastings, or sell samples not to
129 exceed three, two-fluid ounce, tastings or samples per
130 patron, for consumption on the premises during the
131 operation of a festival or fair only; and may sell wine for
132 off-premises consumption only: *Provided*, That for licensed
133 wineries or farm wineries at a licensed festival or fair the
134 tastings, samples and off-premises sales shall occur under
135 the hours of operation as required in this article, except on
136 Sunday, tastings, samples, and off-premises sales are
137 unlawful between the hours of 2:00 a.m. and 10:00 a.m.

138 (4) A festival or fair license may be issued to a “wine
139 club” as defined in this subdivision for a license fee of \$250.
140 The festival or fair committee or the governing body shall
141 designate a person to organize a club under a name which
142 includes the name of the festival or fair and the words “wine
143 club”. The license shall be issued in the name of the wine
144 club. A licensee may not commence the sale of wine as
145 provided in this subdivision until the wine club has at least
146 50 dues-paying members who have been enrolled, and to
147 whom membership cards have been issued. Thereafter, new
148 members may be enrolled and issued membership cards at
149 any time during the period for which the license is issued. A
150 wine club licensed under the provisions of this subdivision
151 may sell wine only to its members, and in portions not to
152 exceed eight ounces per serving. The sales shall take place
153 on premises or in an area cordoned or segregated so as to be
154 closed to the general public, and the general public shall not
155 be admitted to the premises or area. A wine club licensee
156 under the provisions of this subdivision may serve
157 complimentary samples of wine in moderate quantities for
158 tasting. A wine club may not make wine purchases from a
159 direct shipper where the wine may be consumed on the
160 licensed premises of any Class A private wine retail license
161 or private club. A wine club which violates the provisions
162 of this subdivision is subject to the penalties in this article.

163 (5) A licensed winery or farm winery approved to
164 participate in a festival or fair under the provisions of this
165 section and the licensee holding the license, or the licensed
166 winery or farm winery approved to attend a licensed festival
167 or fair, is subject to all other provisions of this article and
168 the rules and orders of the commissioner relating to the
169 license: *Provided*, That the commissioner may by rule or
170 order provide for certain waivers or exceptions with respect
171 to the provisions, rules, or orders as the circumstances of
172 each festival or fair may require, including, without
173 limitation, the right to revoke or suspend any license issued
174 pursuant to this section prior to any notice or hearing
175 notwithstanding the provisions §60-8-27 and §60-8-28 of
176 this code: *Provided, however*, That under no circumstances
177 shall the provisions of §60-8-20(c) or §60-8-20(d) of this
178 code be waived nor shall any exception be granted with
179 respect to those subsections.

180 (6) A license issued under the provisions of this section
181 and the licensee holding the license are not subject to the
182 provisions of subsection (g) of this section.

183 (i)(1) The commissioner may issue a special license for
184 the retail sale of wine in a professional baseball stadium. A
185 license to sell wine granted pursuant to this subsection
186 entitles the licensee to sell and serve wine, for consumption
187 in a professional baseball stadium. For the purpose of this
188 subsection, “professional baseball stadium” means a facility
189 constructed primarily for the use of a major or minor league
190 baseball franchisee affiliated with the National Association
191 of Professional Baseball Leagues, Inc., or its successor, and
192 used as a major or minor league baseball park. Any special
193 license issued pursuant to this subsection shall be for a term
194 beginning on the date of issuance and ending on the next
195 following June 30, and its fee is \$250 regardless of the
196 length of the term of the license. The application for the
197 special license shall contain information required by the
198 commissioner and must be submitted to the commissioner
199 at least 30 days prior to the first day when wine is to be sold

200 at the professional baseball stadium. The special license
201 may be issued in the name of the baseball franchisee or the
202 name of the primary food and beverage vendor under
203 contract with the baseball franchisee. These sales must take
204 place within the confines of the professional baseball
205 stadium. The exterior of the area where wine sales may
206 occur must be surrounded by a fence or other barrier
207 prohibiting entry except upon the franchisee's express
208 permission, and under the conditions and restrictions
209 established by the franchisee, so that the wine sales area is
210 closed to free and unrestricted entry by the general public.

211 (2) A license issued under this subsection and the
212 licensee holding the license are subject to all other
213 provisions of this article and the rules and orders of the
214 commissioner relating to the special license: *Provided*, That
215 the commissioner may by rule or order grant certain waivers
216 or exceptions to those rules or orders as the circumstances
217 of each professional baseball stadium may require,
218 including, without limitation, the right to revoke or suspend
219 any license issued pursuant to this section prior to any notice
220 or hearing notwithstanding §60-8-27 and §60-8-28 of this
221 code: *Provided, however*, That under no circumstances may
222 §60-8-20(c) or §60-8-20(d) of this code be waived nor shall
223 any exception be granted concerning those subsections.

224 (3) The commissioner may propose rules for
225 promulgation in accordance with §29A-3-1 *et seq.* of this
226 code to implement this subsection.

227 (j) A license to sell wine granted to a private wine bed
228 and breakfast, private wine restaurant, private wine spa, or
229 a private club under the provisions of this article entitles the
230 operator to sell and serve wine, for consumption on the
231 premises of the licensee, when the sale accompanies the
232 serving of food or a meal to its members and their guests in
233 accordance with the provisions of this article: *Provided*,
234 That a licensed private wine bed and breakfast, private wine
235 restaurant, private wine spa, or a private club may permit a
236 person over 21 years of age to purchase wine, consume

237 wine, and recork or reseal, using a tamper resistant cork or
238 seal, up to two separate bottles of unconsumed wine in
239 conjunction with the serving of food or a meal to its
240 members and their guests in accordance with the provisions
241 of this article and in accordance with rules promulgated by
242 the commissioner for the purpose of consumption of said
243 wine off premises: *Provided, however,* That for this article,
244 food or a meal provided by the private licensee means that
245 the total food purchase, excluding beverage purchases,
246 taxes, gratuity, or other fees is at least \$15: *Provided further,*
247 That a licensed private wine restaurant or a private club may
248 offer for sale, for consumption off the premises, sealed
249 bottles of wine to its customers provided that no more than
250 one bottle is sold per each person over 21 years of age, as
251 verified by the private wine restaurant or private club, for
252 consumption off the premises. Such licensees are authorized
253 to keep and maintain on their premises a supply of wine in
254 quantities appropriate for the conduct of operations thereof.
255 Any sale of wine is subject to all restrictions set forth in §60-
256 8-20 of this code. A private wine restaurant may also be
257 licensed as a Class A retail dealer in nonintoxicating beer as
258 provided by §11-16-1 *et seq.* of this code.

259 (k) With respect to subsections (h), (i), (j), (o), and (p)
260 of this section, the commissioner shall propose rules for
261 promulgation in accordance with §29A-1-1 *et seq.* of this
262 code, including, but not limited to, the form of the
263 applications and the suitability of both the applicant and
264 location of the licensed premises.

265 (l) The commissioner shall propose rules for
266 promulgation in accordance with the provisions of §29A-1-
267 1 *et seq.* of this code to allow restaurants to serve wine with
268 meals, and to sell wine by the bottle for off-premises
269 consumption as provided in subsection (j) of this section.
270 Each licensed restaurant shall be charged an additional \$100
271 per year fee.

272 (m) The commissioner shall establish guidelines to
273 permit wines to be sold in all stores licensed for retail sales.

274 (n) Wineries and farm wineries may advertise off
275 premises as provided in §17-22-7 of this code.

276 (o) A wine specialty shop under this article may also
277 hold a wine sampling license authorizing the wine specialty
278 shop to conduct special wine sampling events at a licensed
279 wine specialty shop location during regular hours of
280 business. The wine specialty shop may serve up to three
281 complimentary samples of wine, consisting of no more than
282 two fluid ounces each, to any one consumer in one day.
283 Persons serving the complimentary samples must be 21
284 years of age and an authorized representative of the licensed
285 wine specialty shop, winery, farm winery, or a
286 representative of a distributor or registered supplier.
287 Distributor and supplier representatives attending wine
288 sampling events must be registered with the commissioner.
289 No licensee, employee, or representative may furnish, give,
290 sell, or serve complimentary samples of wine to any person
291 less than 21 years of age or to a person who is physically
292 incapacitated due to the consumption of alcoholic liquor or
293 the use of drugs. The wine specialty shop shall notify and
294 secure permission from the commissioner for all wine
295 sampling events one month prior to the event. Wine
296 sampling events may not exceed six hours per calendar day.
297 Licensees must purchase all wines used during these events
298 from a licensed farm winery or a licensed distributor.

299 (p) The commissioner may issue special one-day
300 licenses to duly organized, nonprofit corporations and
301 associations allowing the sale and serving of wine, and may,
302 if applicable, also allow the charitable auctioning of certain
303 sealed bottles of wine for off-premises consumption only,
304 when raising money for athletic, charitable, educational, or
305 religious purposes. "Auction or auctioning", for the
306 purposes of this subsection, means any silent, physical act,
307 or verbal bid auction, whether or not such auction requires
308 in-presence bidding or online internet-based electronic
309 bidding through a secure application or website, but shall
310 not include any action in violation of §47-20-10, §47-20-11,

311 or §61-10-1 *et seq.* of this code. The license application shall
312 contain information required by the commissioner and shall
313 be submitted to the commissioner at least 30 days prior to
314 the event. Wines used during these events may be donated
315 by, or purchased from, a licensed retailer, a distributor,
316 winery, or a farm winery. A licensed winery or farm winery
317 which is authorized in writing by a representative of the duly
318 organized, nonprofit corporation and association which has
319 obtained the one-day license; is in good standing with the
320 state; and obtains the commissioner's approval prior to the
321 one-day license event may, in conjunction with the one-day
322 licensee, exhibit, conduct complimentary tastings, or sell
323 samples not to exceed of three, two-fluid ounce tastings or
324 samples per patron, for consumption on the premises during
325 the operation of the one-day license event; and may sell
326 certain sealed wine bottles manufactured by the licensed
327 winery or farm winery for off-premises consumption:
328 *Provided*, That for a licensed winery or farm winery at a
329 licensed one-day event, the tastings, samples and off-
330 premises sales shall occur under the hours of operation as
331 required in this article, except on Sunday, tastings, samples,
332 and off-premises sales are unlawful between the hours of
333 2:00 a.m. and 10:00 a.m., from the one-day licensee's
334 submitted floor plan for the event subject to the
335 requirements in the code and rules. Under no circumstances
336 may the provisions of §60-8-20(c) or §60-8-20(f) of this
337 code be waived nor may any exception be granted with
338 respect to those subsections. No more than six licenses may
339 be issued to any single licensee during any calendar year.

340 (q) The commissioner may issue special licenses to
341 heritage fairs and festivals allowing the sale, serving, and
342 sampling of wine from a licensed farm winery. The license
343 application shall contain information required by the
344 commissioner and shall be submitted to the commissioner
345 at least 30 days prior to the event. Wines used during these
346 events may be donated by or purchased from a licensed farm
347 winery. Under no circumstances may the provision of §60-
348 8-20(c) of this code be waived nor may any exception be

349 granted with respect thereto. The commissioner shall
350 propose rules for legislative approval in accordance with
351 §29A-3-1 *et seq.* of this code to implement the provisions of
352 this subsection.

353 (r)(1) The commissioner may issue a special license for
354 the retail sale of wine in a college stadium. A license to sell
355 wine granted pursuant to this subsection entitles the licensee
356 to sell and serve wine for consumption in a college stadium.
357 For the purpose of this subsection, “college stadium” means
358 a facility constructed primarily for the use of a Division I,
359 II, or III college that is a member of the National Collegiate
360 Athletic Association, or its successor, and used as a football,
361 basketball, baseball, soccer, or other Division I, II, or III
362 sports stadium. A special license issued pursuant to this
363 subsection shall be for a term beginning on the date of its
364 issuance and ending on the next following June 30, and its
365 fee is \$250 regardless of the length of the term of the license.
366 The application for the special license shall contain
367 information required by the commissioner and must be
368 submitted to the commissioner at least 30 days prior to the
369 first day when wine is to be sold. The special license may
370 be issued in the name of the National Collegiate Athletic
371 Association Division I, II, or III college or university or the
372 name of the primary food and beverage vendor under
373 contract with that college or university. These sales must
374 take place within the confines of the college stadium:
375 *Provided*, That the exterior of the area where wine sales may
376 occur must be surrounded by a fence or other barrier
377 prohibiting entry except upon the college or university’s
378 express permission, and under the conditions and
379 restrictions established by the college or university, so that
380 the wine sales area is closed to free and unrestricted entry
381 by the general public.

382 (2) A license issued under this subsection and the
383 licensee are subject to the other requirements of this article
384 and the rules and orders of the commissioner relating to the
385 special license: *Provided*, That the commissioner may by

386 rule or order grant certain waivers or exceptions to those
387 rules or orders as the circumstances of each the college
388 stadium may require, including, without limitation, the right
389 to revoke or immediately suspend any license issued
390 pursuant to this section prior to any notice or hearing
391 notwithstanding §60-8-27 and §60-8-28 of this code:
392 *Provided, however,* That §60-8-20(c) or §60-8-20(d) of this
393 code may not be waived, nor shall any exception be granted
394 concerning those subsections.

395 (3) The commissioner may propose rules for
396 promulgation in accordance with §29A-3-1 *et seq.* of this
397 code to implement this subsection.

§60-8-3a. Certain wine specialty shops operating as grocery stores authorized to deliver wine curbside, mobile applications, or web-based sales allowed; permits; fees.

1 A wine specialty shop which is licensed to sell wine off
2 premises and which operates a grocery store containing over
3 \$100,000 of fresh produce and saleable food and food
4 products fit for human consumption in a combination of
5 displayed and stored inventory may apply for a Class B
6 license privilege granting the licensee the ability to
7 complete the sale of such wine in the original sealed
8 container for off-premises consumption to a person
9 purchasing wine ordered via a mobile application or web-
10 based software program and picking up the wine from the
11 licensee while in a vehicle:

12 (a) If the vehicle is parked in a licensed parking area
13 which is contiguous to the Class B licensee's licensed
14 premises; or

15 (b) If the vehicle is parked in a licensed parking area
16 which is within 500 feet of the Class B licensee's licensed
17 premises;

18 (c) The parking area referenced in subdivision (b) of this
19 section shall be designated by signage solely for the use of
20 persons who have previously ordered items, including, but

21 not limited to, wine using a mobile application or web-based
22 software program;

23 (d) No wine may be loaded into a vehicle under this
24 section unless the wine specialty shop or the licensee's staff
25 have verified that both the person placing the order and the
26 person picking up the order, if different from the person
27 placing the order, is 21 years of age or older and is not
28 noticeably intoxicated;

29 (e) To operate under this section a wine specialty shop
30 must be in good standing with the commissioner, apply,
31 qualify, pay the Class B license privilege fee, and obtain the
32 permit for the Class B licensee privilege for wine at a
33 designated parking area. The Class B license privilege
34 permit is nonrefundable and a nonprorated annual fee is
35 \$250;

36 (f) The licensee is subject to all requirements, penalties,
37 and sanctions of this article.

§60-8-6b. Deliveries by licensed wine specialty shop.

1 (a) A wine specialty shop with a current active license
2 and in good standing with the commissioner may apply for
3 the additional license privilege of delivering wine with a gift
4 basket, to the purchaser or other person designated by the
5 purchaser, as provided in this section.

6 (b) The wine specialty shop:

7 (1) May only deliver in the county where the wine
8 specialty shop is located with all sales and municipal taxes
9 accounted for and paid, as long as such county is not a dry
10 county or such county does not contain dry local option
11 areas. The delivery of wine is not permitted in a dry county
12 or the dry local option areas;

13 (2) Shall ensure that all wine delivered is sealed in the
14 original container and is clearly and conspicuously labeled
15 with the words "CONTAINS ALCOHOL: SIGNATURE

16 OF PERSON 21 OR OLDER REQUIRED FOR
17 DELIVERY”;

18 (3) Shall provide proof or records to the commissioner
19 by filing monthly returns to the commissioner, on a form as
20 prescribed by the commissioner, and the Tax Commissioner
21 of all deliveries of wine which were purchased by and
22 delivered to a person at least 21 years of age in the wine
23 specialty shop’s county of operation;

24 (4) Shall only deliver wine with a gift basket to
25 addresses within the State of West Virginia and within the
26 requirements noted in this subsection;

27 (5) Shall not deliver in excess of two cases of wine with
28 a gift basket per month to any person or address;

29 (6) Shall not deliver wine to any private club, private
30 wine restaurant, wine retailer, private wine bed and
31 breakfast, or private wine spa; and

32 (7) May only deliver wine with a gift basket for personal
33 use and not for resale to a person. The wine shall not be
34 delivered and left at any address without verifying a
35 person’s identification as required in this section.

36 (c) The nonprorated, nonrefundable fee for the
37 additional wine specialty shop delivery license privilege is
38 \$250.

39 (d) The wine delivered by the authority of this section
40 must be purchased in-person with a face-to-face transaction
41 at the shop; may not be ordered or purchased by telephonic,
42 electronic, or web-based wine ordering; and must be
43 delivered by an officer or employee of the wine specialty
44 shop licensee who is 21 years of age or older. Nonlicensed
45 third parties may not deliver wine with a gift basket on
46 behalf of a licensed wine specialty shop.

47 (e) Any vehicle delivering wine in a gift basket shall
48 meet the permit requirements set forth in this chapter.

49 (f) The commissioner may propose rules for
50 promulgation in accordance with §29A-3-1 *et seq.* of this
51 code to effectuate the purposes of this section.

§60-8-17. License issuance or refusal; terms of license.

1 (a) Upon receipt of the completed application, fee, and
2 bond if required, the commissioner shall conduct any
3 investigation he or she considers necessary to determine the
4 accuracy of the matters contained in the completed
5 application. For the purposes of conducting such
6 investigation, the commissioner may withhold the granting
7 or refusal to grant a license for a period not to exceed 30
8 days or until the applicant has completed the conditions set
9 forth in §60-8-16 of this code. If it appears that the applicant
10 is a suitable person, is located at a suitable premise, there is
11 no false statement, no material misrepresentations, no
12 hidden ownership, no persons with an undisclosed
13 pecuniary interest contained in the application, and that the
14 issuance of the license would not be in conflict with any of
15 the provisions of this chapter, the commissioner shall issue
16 the license. Otherwise the commissioner shall refuse to
17 issue such license.

18 (b) The commissioner shall refuse the license of any
19 applicant if he or she finds that such applicant is not a
20 suitable person, that the place of business of such applicant
21 is not a suitable place, or that such applicant has not
22 complied with the provisions of this chapter. Upon refusal
23 to issue such license, the commissioner shall enter an order
24 refusing such application. The refusal is final unless a
25 hearing is requested in accordance with the provisions of
26 §60-8-18 of this code. When such refusal becomes final the
27 commissioner shall immediately refund to the applicant his
28 or her fees and bond accompanying the application.

29 (c) The license expires on June 30 next following the
30 date it was issued and may be renewed upon the same
31 showing as required for the issuance of the initial license,

32 together with the payment of fee and filing of any bond
33 required by this article.

34 (d) A licensee that fails to complete a renewal
35 application and make payment of its annual license fee in
36 renewing its license on or before June 30 of any subsequent
37 year, after initial application, shall be charged an additional
38 \$150 reactivation fee. The licensee must pay the applicable
39 full-year annual license fee and the reactivation fee prior to
40 the processing of any renewal application. A licensee who
41 continues to operate upon the expiration of its license is
42 subject to all fines, penalties, and sanctions available in §11-
43 16-23 of this code, as determined by the commissioner.

44 (e) Such license shall not be transferred to another
45 person, but the location of the premises to which the license
46 relates may be changed with the written consent of the
47 commissioner, if the new location satisfies the requirements
48 of this article upon an initial application and payment of a
49 new application fee.



CHAPTER 16

**(Com. Sub. for S. B. 529 - By Senators Trump, Tarr
and Rucker)**

[Passed March 8, 2019; in effect ninety days from passage.]

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

AN ACT to amend and reenact §11-16-3, §11-16-5, §11-16-6a, §11-16-6b, §11-16-8, §11-16-9, §11-16-10, §11-16-12, and §11-16-17a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §11-16-6c and §11-16-11b, all relating to nonintoxicating beer generally; creating a temporary license for nonintoxicating beer floorplan extensions of existing

licensee floorplans; implementing a fee for the license; removing the two growler limit per patron per day for licensees who sell growlers for off premises consumption; increasing allowable growler size to no larger than 128 ounces; providing for certain growler licensees to conduct complimentary samplings; providing a 30-day requirement to issue or deny a license application once the application is completed; implementing a \$100 beer license operations fee and establishing a special revenue account; implementing a reactivation fee for licensees that fail to timely file their renewal applications and pay their license fees; creating a one-day special license for certain nonprofit and tax exempt entities hosting artistic, athletic, charitable, educational, or religious events to purchase and sell nonintoxicating beer and nonintoxicating craft beer; allowing nonintoxicating beer and nonintoxicating craft beer to have a maximum alcohol content of 15 percent by volume and 11.9 percent by weight; providing limitations on special licenses; setting forth requirements for special licenses; providing for a Class B licensee privilege for nonintoxicating beer or nonintoxicating craft beer sales at a designated parking area; implementing a license fee; licensing brewers, resident brewers, and distributor representatives; providing for transportation permits for nonintoxicating beer and nonintoxicating craft beer; requiring nonintoxicating beer label registration; implementing an operational fee for licensed representatives, transportation permits, and container label registration; removing the bond requirements for brewers, resident brewers, distributors, and Class S licenses; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

- 1 For the purpose of this article, except where the context
- 2 clearly requires differently:

3 (1) “Brand” means a nonintoxicating beer product
4 manufactured, brewed, mixed, concocted, blended, bottled
5 or otherwise produced, imported, or transshipped by a
6 brewer or manufacturer, the labels of which have been
7 registered and approved by the commissioner, that is being
8 offered for sale or sold in West Virginia by a distributor who
9 has been appointed in a valid franchise agreement or a valid
10 amendment thereto.

11 (2) “Brewer” or “manufacturer” means any person
12 manufacturing, otherwise producing, importing, or
13 transshipping nonintoxicating beer or nonintoxicating craft
14 beer for sale at wholesale to any licensed distributor. Brewer
15 or manufacturer may be used interchangeably throughout
16 this article. A brewer may obtain only one brewer’s license
17 for its nonintoxicating beer or nonintoxicating craft beer.

18 (3) “Brewpub” means a place of manufacture of
19 nonintoxicating beer or nonintoxicating craft beer owned by
20 a resident brewer, subject to federal and state regulations
21 and guidelines, a portion of which premises is designated
22 for retail sales of nonintoxicating beer or nonintoxicating
23 craft beer by the resident brewer owning the brewpub.

24 (4) “Class A retail license” means a retail license
25 permitting the retail sale of liquor at a freestanding liquor
26 retail outlet licensed pursuant to chapter 60 of this code.

27 (5) “Class B retail license” means a retail license
28 permitting the retail sale of liquor at a mixed retail liquor
29 outlet licensed pursuant to chapter 60 of this code.

30 (6) “Commissioner” means the West Virginia Alcohol
31 Beverage Control Administration Commissioner.

32 (7) “Distributor” means and includes any person
33 jobbing or distributing nonintoxicating beer or
34 nonintoxicating craft beer to retailers at wholesale and
35 whose warehouse and chief place of business shall be within
36 this state. For purposes of a distributor only, the term

37 “person” means and includes an individual, firm, trust,
38 partnership, limited partnership, limited liability company,
39 association or corporation. Any trust licensed as a
40 distributor or any trust that is an owner of a distributor
41 licensee, and the trustee or other persons in active control of
42 the activities of the trust relating to the distributor license, is
43 liable for acts of the trust or its beneficiaries relating to the
44 distributor license that are unlawful acts or violations of
45 §11-11-1 *et seq.* of this code notwithstanding the liability of
46 trustees in §44D-10-1 *et seq.* of this code.

47 (8) “Franchise agreement” means the written agreement
48 between a brewer and a distributor that is identical as to
49 terms and conditions between the brewer and all its
50 distributors, which agreement has been approved by the
51 commissioner. The franchise agreement binds the parties so
52 that a distributor, appointed by a brewer, may distribute all
53 of the brewer’s nonintoxicating beer products, brands or
54 family of brands imported and offered for sale in West
55 Virginia, including, but not limited to, existing brands, line
56 extensions, and new brands all in the brewer’s assigned
57 territory for the distributor. All brands and line extensions
58 being imported or offered for sale in West Virginia must be
59 listed by the brewer in the franchise agreement or a written
60 amendment to the franchise agreement. A franchise
61 agreement may be amended by mutual written agreement of
62 the parties as approved by the commissioner with identical
63 terms and conditions for a brewer and all of its distributors.
64 Any approved amendment to the franchise agreement
65 becomes a part of the franchise agreement. A brewer and a
66 distributor may mutually agree in writing to cancel a
67 franchise agreement. A distributor terminated by a brewer
68 as provided in this article and the promulgated rules no
69 longer has a valid franchise agreement. If a brewer has
70 reached an agreement to cancel a distributor or has
71 terminated a distributor, then a brewer may appoint a
72 successor distributor who accedes to all the rights of the
73 cancelled or terminated distributor.

74 (9) “Franchise distributor network” means the
75 distributors who have entered into a binding written
76 franchise agreement, identical as to terms and conditions, to
77 distribute nonintoxicating beer products, brands, and line
78 extensions in an assigned territory for a brewer. A brewer
79 may only have one franchise distributor network: *Provided*,
80 That a brewer that has acquired the manufacturing, bottling,
81 or other production rights for the sale of nonintoxicating
82 beer at wholesale from a selling brewer as specified in §11-
83 16-21(a)(2) of this code shall continue to maintain and be
84 bound by the selling brewer’s separate franchise
85 distributor’s network for any of its existing brands, line
86 extensions, and new brands.

87 (10) “Freestanding liquor retail outlet” means a retail
88 outlet that sells only liquor, wine, beer, nonintoxicating
89 beer, and other alcohol-related products, as defined pursuant
90 to §60-3A-4 of this code.

91 (11) “Growler” means a container or jug that is made of
92 glass, ceramic, metal, or other material approved by the
93 commissioner, that may be no larger than 128 fluid ounces
94 in size and must be capable of being securely sealed. The
95 growler is utilized by an authorized licensee for purposes of
96 off-premise sales only of nonintoxicating beer or
97 nonintoxicating craft beer for personal consumption not on
98 a licensed premise and not for resale. Notwithstanding any
99 other provision of this code to the contrary, a securely sealed
100 growler is not an open container under federal, state, and
101 local law. A growler with a broken seal is an open container
102 under federal, state, and local law unless it is located in an
103 area of the motor vehicle physically separated from the
104 passenger compartment. The secure sealing of a growler
105 requires the use of a tamper-resistant seal, security tape, or
106 other material, as approved by the commissioner, placed on
107 or over the growler’s opening, which seal, security tape or
108 other material is clearly marked with the date of the secure
109 sealing by the authorized licensee who is selling the
110 growler.

111 (12) “Line extension” means any nonintoxicating beer
112 product that is an extension of brand or family of brands that
113 is labeled, branded, advertised, marketed, promoted, or
114 offered for sale with the intent or purpose of being
115 manufactured, imported, associated, contracted, affiliated,
116 or otherwise related to a brewer’s existing brand through the
117 use of a brewer, its subsidiaries, parent entities, contracted
118 entities, affiliated entities, or other related entities. In
119 determining whether a nonintoxicating beer product is a line
120 extension, the commissioner may consider, but is not
121 limited to, the following factors: Name or partial name;
122 trade name or partial trade name; logos; copyrights;
123 trademarks or trade design; product codes; advertising
124 promotion; or pricing.

125 (13) “Nonintoxicating beer” means all natural cereal
126 malt beverages or products of the brewing industry
127 commonly referred to as beer, lager beer, ale and all other
128 mixtures and preparations produced by the brewing
129 industry, including malt coolers and nonintoxicating craft
130 beers with no caffeine infusion or any additives masking or
131 altering the alcohol effect containing at least one half of one
132 percent alcohol by volume, but not more than 11.9 percent
133 of alcohol by weight, or 15 percent alcohol by volume,
134 whichever is greater. The word “liquor” as used in chapter
135 60 of this code does not include or embrace nonintoxicating
136 beer nor any of the beverages, products, mixtures, or
137 preparations included within this definition.

138 (14) “Nonintoxicating beer floor plan extension” means
139 a temporary one-day extension of an existing Class A
140 licensee’s floor plan to a contiguous, adjoining and bounded
141 area, such as a parking lot or outdoor area, which shall for
142 the temporary period encompass the licensee’s licensed
143 premises; further such license shall be endorsed or approved
144 by the county or municipality where the license is located;
145 such license shall be in good standing with the
146 commissioner, and further such temporary event shall cease

147 on or before midnight of the approved temporary one-day
148 event.

149 (15) “Nonintoxicating beer sampling event” means an
150 event approved by the commissioner for a Class A retail
151 licensee to hold a nonintoxicating beer sampling authorized
152 pursuant to §11-16-11a of this code.

153 (16) “Nonintoxicating beer sampling day” means any
154 days and hours of the week where Class A retail licensees
155 may sell nonintoxicating beer pursuant to §11-16-11a and
156 §11-16-18(a)(1) of this code, and is approved, in writing, by
157 the commissioner to conduct a nonintoxicating beer
158 sampling event.

159 (17) “Nonintoxicating craft beer” means any beverage
160 obtained by the natural fermentation of barley, malt, hops,
161 or any other similar product or substitute and containing not
162 less than one half of one percent by volume and not more
163 than 15 percent alcohol by volume or 11.9 percent alcohol
164 by weight with no caffeine infusion or any additives
165 masking or altering the alcohol effect.

166 (18) “Original container” means the container used by a
167 resident brewer or brewer at the place of manufacturing,
168 bottling, or otherwise producing nonintoxicating beer or
169 nonintoxicating craft beer for sale at wholesale.

170 (19) “Person” means and includes an individual, firm,
171 partnership, limited partnership, limited liability company,
172 association, or corporation.

173 (20) “Private club” means a license issued pursuant to
174 §60-7-1 *et seq.* of this code.

175 (21) “Resident brewer” means any brewer or
176 manufacturer of nonintoxicating beer or nonintoxicating
177 craft beer whose principal place of business and
178 manufacture is located in the State of West Virginia and
179 which does not brew or manufacture more than 25,000
180 barrels of nonintoxicating beer or nonintoxicating craft beer

181 annually, and does not self-distribute more than 10,000
182 barrels thereof in the State of West Virginia annually.

183 (22) “Retailer” means any person selling, serving, or
184 otherwise dispensing nonintoxicating beer and all products
185 regulated by this article, including, but not limited to, malt
186 coolers at his or her established and licensed place of
187 business.

188 (23) “Tax Commissioner” means the Tax
189 Commissioner of the State of West Virginia or the
190 commissioner’s designee.

**§11-16-5. State license required; alcoholic content of beer
manufactured for sale without state.**

1 No person shall manufacture, tender, sell, possess for
2 sale, transport, or distribute nonintoxicating beer except in
3 accordance with the provisions of this article, and after first
4 obtaining a state license therefor, as provided in this article.

**§11-16-6a. Brewer and resident brewer license to
manufacture, sell, and provide complimentary samples.**

1 (a) Legislative findings. — The Legislature hereby finds
2 that it is in the public interest to regulate, control, and
3 support the brewing, manufacturing, distribution, sale,
4 consumption, transportation, and storage of nonintoxicating
5 beer and nonintoxicating craft beer and its industry in this
6 state in order to protect the public health, welfare, and safety
7 of the citizens of this state, and promote hospitality and
8 tourism. Therefore, this section authorizes a licensed brewer
9 or resident brewer with its principal place of business and
10 manufacture located in this state to have certain abilities in
11 order to promote the sale of nonintoxicating beer and
12 nonintoxicating craft beer manufactured in this state for the
13 benefit of the citizens of this state, the state’s growing
14 brewing industry, and the state’s hospitality and tourism
15 industry, all of which are vital components for the state’s
16 economy.

17 (b) *Sales of nonintoxicating beer.* — A licensed brewer
18 or resident brewer with its principal place of business and
19 manufacture located in the State of West Virginia may offer
20 only nonintoxicating beer or nonintoxicating craft beer
21 manufactured by the licensed brewer or resident brewer for
22 retail sale to customers from the brewer's or resident
23 brewer's licensed premises for consumption off of the
24 licensed premises only in the form of kegs, bottles, cans, or
25 growlers for personal consumption and not for resale. A
26 licensed brewer or resident brewer may not sell, give or
27 furnish nonintoxicating beer for consumption on the
28 premises of the principal place of business and manufacture
29 located in the State of West Virginia, except for the limited
30 purpose of complimentary samples as permitted in
31 subsection (c) of this section.

32 (c) *Complimentary samples.* — A licensed brewer or
33 resident brewer with its principal place of business and
34 manufacture located in the State of West Virginia may only
35 offer complimentary samples of nonintoxicating beer or
36 nonintoxicating craft beer brewed at the brewer's or resident
37 brewer's principal place of business and manufacture
38 located in the State of West Virginia. The complimentary
39 samples may be no greater than two ounces per sample per
40 patron, and a sampling shall not exceed 10 complimentary
41 two-ounce samples per patron per day. A licensed brewer or
42 resident brewer providing complimentary samples shall
43 provide complimentary food items to the patron consuming
44 the complimentary samples; and prior to any sampling,
45 verify, using proper identification, that the patron sampling
46 is 21 years of age or over and that the patron is not visibly
47 intoxicated.

48 (d) *Retail sales.* — Every licensed brewer or resident
49 brewer under this section shall comply with all the
50 provisions of this article as applicable to nonintoxicating
51 beer retailers when conducting sales of nonintoxicating beer
52 or nonintoxicating craft beer and shall be subject to all
53 applicable requirements and penalties in this article.

54 (e) *Payment of taxes and fees.* — A licensed brewer or
55 resident brewer under this section shall pay all taxes and
56 fees required of licensed nonintoxicating beer retailers, in
57 addition to any other taxes and fees required, and meet
58 applicable licensing provisions as required by this chapter
59 and by rule of the commissioner.

60 (f) *Advertising.* — A licensed brewer or resident brewer
61 under this section may advertise a particular brand or brands
62 of nonintoxicating beer or nonintoxicating craft beer
63 produced by the licensed brewer or resident brewer and the
64 price of the nonintoxicating beer or nonintoxicating craft
65 beer subject to state and federal requirements or restrictions.
66 The advertisement may not encourage intemperance.

67 (g) *Growler requirements.* — A licensed brewer or
68 resident brewer under this section must fill a growler and
69 patrons are not permitted to access the secure area or fill a
70 growler. A licensed brewer or resident brewer under this
71 section must sanitize, fill, securely seal, and label any
72 growler prior to its sale. A licensed brewer or resident
73 brewer under this section may only offer for retail sale
74 growlers no larger than 128 fluid ounces of nonintoxicating
75 beer or nonintoxicating craft beer manufactured by the
76 licensed brewer or resident brewer for personal
77 consumption off of the licensed premises and not for resale.
78 A licensed brewer or resident brewer under this section may
79 refill a growler subject to the requirements of this section.
80 A licensed brewer or resident brewer shall visually inspect
81 any growler before filling or refilling it. A licensed brewer
82 or resident brewer may not fill or refill any growler that
83 appears to be cracked, broken, unsafe or otherwise unfit to
84 serve as a sealed beverage container.

85 (h) *Growler labeling.* — A licensed brewer or resident
86 brewer under this section selling growlers shall affix a
87 conspicuous label on all sold and securely sealed growlers
88 listing the name of the licensee selling the growler, the
89 brand of the nonintoxicating beer or nonintoxicating craft
90 beer in the growler, the alcohol content by volume of the

91 nonintoxicating beer or nonintoxicating craft beer in the
92 growler and the date the growler was filled or refilled, and,
93 further, all labeling on the growler shall be consistent with
94 all federal labeling and warning requirements.

95 (i) *Growler sanitation.* — A licensed brewer or resident
96 brewer authorized under this section shall clean and sanitize
97 all growlers he or she fills or refills in accordance with all
98 state and county health requirements prior to its sealing. In
99 addition, the licensed brewer or resident brewer shall
100 sanitize, in accordance with all state and county health
101 requirements, all taps, tap lines, pipe lines, barrel tubes and
102 any other related equipment used to fill or refill growlers.
103 Failure to comply with this subsection may result in
104 penalties under §11-16-23 of this code.

105 (j) *Fee.* — There is no additional fee for a licensed
106 brewer or resident brewer authorized under this section to
107 sell growlers.

108 (k) *Limitations on licensees.* — To be authorized under
109 this section, a licensed brewer or resident brewer may not
110 produce more than 25,000 barrels per calendar year at the
111 brewer's or resident brewer's principal place of business
112 and manufacture located in the State of West Virginia. No
113 more than one brewer or resident brewer license may be
114 issued to a single person or entity and no person may hold
115 both a brewer and a resident brewer license. A licensed
116 brewer or resident brewer under this section may only
117 conduct tours, give complimentary samples and sell
118 growlers during the hours of operation set forth in §11-16-
119 18(a)(1) of this code. A licensed brewer or resident brewer
120 authorized under this section shall be subject to the
121 applicable penalties under §11-16-23 of this code for
122 violations of this section.

123 (l) *Rules.* — The commissioner, in consultation with the
124 Bureau for Public Health concerning sanitation, is
125 authorized to propose rules for legislative approval,

126 pursuant to §29A-3-1 *et seq.* of this code, to implement this
127 section.

§11-16-6b. Brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee, and Class B retail licensee's authority to sell growlers.

1 (a) *Legislative findings.* — The Legislature hereby finds
2 that it is in the public interest to regulate, control and support
3 the brewing, manufacturing, distribution, sale,
4 consumption, transportation, and storage of nonintoxicating
5 beer and nonintoxicating craft beer and its industry in this
6 state in order to protect the public health, welfare, and safety
7 of the citizens of this state and promote hospitality and
8 tourism. Therefore, this section authorizes a licensed
9 brewpub, Class A retail dealer, Class B retail dealer, private
10 club, Class A retail licensee, or Class B retail licensee to
11 have certain abilities in order to promote the sale of
12 nonintoxicating beer and nonintoxicating craft beer
13 manufactured in this state for the benefit of the citizens of
14 this state, the state's growing brewing industry, and the
15 state's hospitality and tourism industry, all of which are
16 vital components for the state's economy.

17 (b) *Sales of nonintoxicating beer.* — A licensed
18 brewpub, Class A retail dealer, Class B retail dealer, private
19 club, Class A retail licensee, or Class B retail licensee who
20 pays the fee in subsection (i) of this section and meets the
21 requirements of this section may offer nonintoxicating beer
22 or nonintoxicating craft beer for retail sale to patrons from
23 their licensed premises in a growler for personal
24 consumption only off of the licensed premises and not for
25 resale. Prior to the sale, the licensee shall verify, using
26 proper identification, that any patron purchasing
27 nonintoxicating beer or nonintoxicating craft beer is 21
28 years of age or over and that the patron is not visibly
29 intoxicated. A licensee authorized under this section may
30 not sell, give or furnish alcoholic liquors, including wine,
31 for consumption off of its licensed premises, unless it is a
32 private club licensed to sell sealed wine for consumption off

33 of the licensed premises and meets the requirements set out
34 in §60-8-3(j) and §60-8-3(l) of this code, for the sale of
35 wine, not liquor.

36 (c) *Retail sales.* — Every licensee authorized under this
37 section shall comply with all the provisions of this article as
38 applicable to nonintoxicating beer retailers when
39 conducting sales of nonintoxicating beer or nonintoxicating
40 craft beer and shall be subject to all applicable requirements
41 and penalties in this article.

42 (d) *Payment of taxes and fees.* — A licensee authorized
43 under this section shall pay all taxes and fees required of
44 licensed nonintoxicating beer retailers, in addition to any
45 other taxes and fees required, and meet applicable licensing
46 provisions as required by this chapter and by rule of the
47 commissioner.

48 (e) *Advertising.* — A licensee authorized under this
49 section may advertise a particular brand or brands of
50 nonintoxicating beer or nonintoxicating craft beer and the
51 price of the nonintoxicating beer or nonintoxicating craft
52 beer subject to state and federal requirements or restrictions.
53 The advertisement may not encourage intemperance.

54 (f) *Growler requirements.* — A licensee authorized
55 under this section must fill a growler and patrons are not
56 permitted to access the secure area or fill a growler. A
57 licensee authorized under this section must sanitize, fill,
58 securely seal, and label any growler prior to its sale. A
59 licensee authorized under this section may only offer for
60 retail sale growlers no larger than 128 fluid ounces of
61 nonintoxicating beer or nonintoxicating craft beer for
62 personal consumption off of the licensed premises and not
63 for resale. A licensee under this section may refill a growler
64 subject to the requirements of this section. A licensee shall
65 visually inspect any growler before filling or refilling it. A
66 licensee may not fill or refill any growler that appears to be
67 cracked, broken, unsafe, or otherwise unfit to serve as a
68 sealed beverage container.

69 (g) *Growler labeling.* — A licensee authorized under
70 this section selling growlers shall affix a conspicuous label
71 on all sold and securely sealed growlers listing the name of
72 the licensee selling the growler, the brand of the
73 nonintoxicating beer or nonintoxicating craft beer in the
74 growler, the alcohol content by volume of the
75 nonintoxicating beer or nonintoxicating craft beer in the
76 growler, and the date the growler was filled or refilled, and,
77 further, all labeling on the growler shall be consistent with
78 all federal labeling and warning requirements.

79 (h) *Growler sanitation.* — A licensed brewer or resident
80 brewer authorized under this section shall clean and sanitize
81 all growlers he or she fills or refills in accordance with all
82 state and county health requirements prior to its sealing. In
83 addition, the licensed brewer or resident brewer shall
84 sanitize, in accordance with all state and county health
85 requirements, all taps, tap lines, pipe lines, barrel tubes, and
86 any other related equipment used to fill or refill growlers.
87 Failure to comply with this subsection may result in
88 penalties under §11-16-23 of this code.

89 (i) *Fees.* — Commencing July 1, 2015, and every July 1
90 thereafter, there is an annual \$100 nonrefundable fee for a
91 licensee, except for a licensed brewpub, to sell growlers as
92 provided by this section. The licensee must be in good
93 standing with the state at the time of paying the fee.

94 (j) *Complimentary samples.* — A licensee authorized
95 under this section may provide complimentary samples
96 which may be no greater than one ounce per sample and a
97 sampling shall not exceed three different nonintoxicating
98 beer or nonintoxicating craft beer complimentary one-ounce
99 samples per patron per day. A licensee authorized under this
100 section providing complimentary samples shall prior to any
101 sampling verify, using proper identification, that the patron
102 sampling is 21 years of age or over and that the patron is not
103 visibly intoxicated. All nonintoxicating beer and
104 nonintoxicating craft beer utilized for sampling purposes
105 must be purchased from the licensee's inventory.

106 (k) *Limitations on licensees.* — A licensee under this
107 section may only sell growlers during the hours of operation
108 set forth in §11-16-18(a)(1) of this code. Any licensee
109 licensed under this section must maintain a secure area for
110 the sale of nonintoxicating beer or nonintoxicating craft
111 beer in a growler. The secure area must only be accessible
112 by the licensee. Any licensee licensed under this section
113 shall be subject to the applicable penalties under §11-16-23
114 of this code for violations of this section.

115 (l) *Nonapplicability of certain statutes.* —
116 Notwithstanding any other provision of this code to the
117 contrary, licensees under this section are permitted to break
118 the seal of the original container for the limited purpose of
119 filling a growler or providing complimentary samples as
120 provided in this section. Any unauthorized sale of
121 nonintoxicating beer or nonintoxicating craft beer or any
122 consumption not permitted on the licensee's licensed
123 premises is subject to penalties under this article.

124 (m) *Rules.* — The commissioner is authorized to
125 propose rules for legislative approval, pursuant to §29A-3-
126 1 *et seq.* of this code, to implement this section.

**§11-16-6c. Class B retail dealer which is a grocery store,
mobile application, or web-based sales privilege permit;
fee.**

1 (a) A Class B retail dealer who is licensed to sell
2 nonintoxicating beer or nonintoxicating craft beer and who
3 operates a grocery store containing over \$100,000 of fresh
4 produce and saleable food and food products fit for human
5 consumption in a combination of displayed and stored
6 inventory may apply for a Class B license privilege granting
7 the licensee the ability to complete the sale of such
8 nonintoxicating beer or nonintoxicating craft beer in the
9 original sealed container for off-premises consumption to a
10 person purchasing the nonintoxicating beer or
11 nonintoxicating craft beer from a vehicle:

12 (1) If the vehicle is parked in a licensed parking area
13 which is contiguous to the Class B licensee's licensed
14 premises; or

15 (2) If the vehicle is parked in a licensed parking area
16 which is within 500 feet of the Class B licensee.

17 (b) The parking area referenced in subsection (a) of this
18 section shall be designated by signage solely for the use of
19 persons who have previously ordered items including, but
20 not limited to, nonintoxicating beer or nonintoxicating craft
21 beer using a mobile application or web-based software
22 program.

23 (c) No nonintoxicating beer or nonintoxicating craft
24 beer may be loaded into a vehicle under this section unless
25 the Class B licensee or such licensee's staff have verified
26 that both the person placing the order, and, if different from
27 the person placing the order, the person picking up the order
28 are 21 years of age or older and not noticeably intoxicated;
29 and

30 (d) To operate under this section, a Class B retail dealer
31 licensee must be in good standing with the commissioner,
32 apply, qualify, pay the Class B license privilege fee and
33 obtain the permit for the Class B licensee privilege for
34 nonintoxicating beer or nonintoxicating craft beer sales at a
35 designated parking area. The Class B license privilege
36 permit nonrefundable and non-prorated annual fee is \$250.
37 For purposes of criminal enforcement of the provisions of
38 this article, persons placing orders and picking up orders are
39 deemed to be purchasers.

40 (e) The licensee shall be subject to all requirements,
41 penalties and sanctions of this article.

**§11-16-8. Form of application for license; fee and bond;
refusal of license.**

1 (a) A license may be issued by the commissioner to any
2 person who submits an application, accompanied by a

3 license fee and, where required, a bond, and states under
4 oath:

5 (1) The name and residence of the applicant, the
6 duration of such residency, that the applicant has been a
7 resident of the state for a period of two years preceding the
8 date of the application and that the applicant is 21 years of
9 age. If the applicant is a firm, association, partnership,
10 limited partnership, limited liability company, or
11 corporation, the application shall include the residence of
12 the members or officers for a period of two years preceding
13 the date of such application. If a person, firm, partnership,
14 limited partnership, limited liability company, association,
15 corporation, or trust applies for a license as a distributor,
16 such person, or in the case of a firm, partnership, limited
17 partnership, limited liability company, association or trust,
18 the members, officers, trustees or other persons in active
19 control of the activities of the limited liability company,
20 association or trust relating to the license, shall state under
21 oath that each has been a bona fide resident of the state for
22 four years preceding the date of such application. If the
23 applicant is a trust or has a trust as an owner, the trustees or
24 other persons in active control of the activities of the trust
25 relating to the license shall provide a certification of trust as
26 described in §44D-10-1013 of this code. This certification
27 of trust shall include the excerpts described in §44D-10-
28 1013(e), of this code and shall further state, under oath, the
29 names, addresses, Social Security numbers and birth dates
30 of the beneficiaries of the trust and certify that the trustee
31 and beneficiaries are 21 years of age or older. If a
32 beneficiary is not 21 years of age, the certification of trust
33 must state that such beneficiary's interest in the trust is
34 represented by a trustee, parent, or legal guardian who is 21
35 years of age and who will direct all actions on behalf of such
36 beneficiary related to the trust with respect to the distributor
37 until the beneficiary is 21 years of age. Any beneficiary who
38 is not 21 years of age or older shall have his or her trustee,
39 parent, or legal guardian include in the certification of trust

40 and state under oath his or her name, address, Social
41 Security number and birth date;

42 (2) The place of birth of applicant, that he or she is a
43 citizen of the United States and of good moral character and,
44 if a naturalized citizen, when and where naturalized. If the
45 applicant is a corporation organized or authorized to do
46 business under the laws of the state, the application must
47 state when and where incorporated, the name and address of
48 each officer, and that each officer is a citizen of the United
49 States and a person of good moral character. If the applicant
50 is a firm, association, limited liability company, partnership,
51 limited partnership, trust or has a trust as an owner, the
52 application shall provide the place of birth of each member
53 of the firm, association, limited liability company,
54 partnership or limited partnership and of the trustees,
55 beneficiaries or other persons in active control of the
56 activities of the trust relating to the license and that each
57 member or trustee, beneficiary or other persons in active
58 control of the activities of the trust relating to the license is
59 a citizen of the United States, and if a naturalized citizen,
60 when and where naturalized, each of whom must qualify
61 and sign the application. The requirements as to residence
62 do not apply to the officers of a corporation applying for a
63 retailer's license but the officers, agent, or employee who
64 manages and is in charge of the licensed premises shall
65 possess all of the qualifications required of an individual
66 applicant for a retailer's license including the requirement
67 as to residence;

68 (3) The particular place for which the license is desired
69 and a detailed description thereof;

70 (4) The name of the owner of the building and, if the
71 owner is not the applicant, that the applicant is the actual
72 and bona fide lessee of the premises;

73 (5) That the place or building in which is proposed to do
74 business conforms to all applicable laws of health, fire and
75 zoning regulations and is a safe and proper place or building

76 not within 300 feet of a school or church measured from
77 front door to front door, along the street or streets. This
78 requirement does not apply to a Class B license or to a place
79 occupied by a beer licensee so long as it is continuously so
80 occupied. The prohibition against locating a proposed
81 business in a place or building within 300 feet of a school
82 does not apply to a college or university that has notified the
83 commissioner, in writing, that it has no objection to the
84 location of a proposed business in a place or building within
85 300 feet of the college or university;

86 (6) That the applicant is not incarcerated and has not
87 during the five years preceding the date of said application
88 been convicted of a felony;

89 (7) That the applicant is the only person in any manner
90 pecuniarily interested in the business so asked to be licensed
91 and that no other person is in any manner pecuniarily
92 interested during the continuance of the license; and

93 (8) That the applicant has not during five years
94 preceding the date of the application had a nonintoxicating
95 beer license revoked.

96 (b) In the case of an applicant that is a trust or has a trust
97 as an owner, a distributor license may be issued only upon
98 submission by the trustees or other persons in active control
99 of the activities of the trust relating to the distributor license
100 of a true and correct copy of the written trust instrument to
101 the commissioner for his or her review. Notwithstanding
102 any provision of law to the contrary, the copy of the written
103 trust instrument submitted to the commissioner pursuant to
104 this section is confidential and is not a public record and is
105 not available for release pursuant to the West Virginia
106 Freedom of Information Act codified in 29B-1-1 *et seq.* of
107 this code.

108 (c) The provisions and requirements of subsection (a) of
109 this section are mandatory prerequisites for the issuance
110 and, if any applicant fails to qualify, the license shall be

111 refused. In addition to the information furnished in any
112 application, the commissioner may make such additional
113 and independent investigation of each applicant and of the
114 place to be occupied as necessary or advisable and, for this
115 reason, all applications, with license fee and bond, must be
116 submitted with all true and correct information. For the
117 purpose of conducting such independent investigation, the
118 commissioner may withhold the granting or refusal to grant
119 such license for a 30-day period or until the applicant has
120 completed the conditions set forth in this section. If it shall
121 appear that such applicant meets the requirements in the
122 code and the rules, including, but not limited to, being a
123 suitable person of good reputation and morals; having made
124 no false statements or material misrepresentations;
125 involving no hidden ownership; and having no persons with
126 an undisclosed pecuniary interest contained in such
127 application; and if there are no other omissions or failures
128 by the applicant to complete the application, as determined
129 by the commissioner, the commissioner shall issue a license
130 authorizing the applicant to sell nonintoxicating beer or
131 nonintoxicating craft beer.

132 (d) The commissioner may refuse a license to any
133 applicant under the provisions of this article if the
134 commissioner is of the opinion:

135 (1) That the applicant is not a suitable person to be
136 licensed;

137 (2) That the place to be occupied by the applicant is not
138 a suitable place or is within 300 feet of any school or church
139 measured from front door to front door along the street or
140 streets. This requirement does not apply to a Class B
141 licensee or to a place now occupied by a beer licensee so
142 long as it is continuously so occupied. The prohibition
143 against locating any such place within 300 feet of a school
144 does not apply to a college or university that has notified the
145 commissioner, in writing, that it has no objection to the
146 location of any such place within 300 feet; or

147 (3) That the license should not be issued for reason of
148 conduct declared to be unlawful by this article.

§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of nonintoxicating beer permitted; distributors; brewers; brewpubs.

1 (a) All retail dealers, distributors, brewpubs, brewers
2 and resident brewers of nonintoxicating beer and of
3 nonintoxicating craft beer shall pay an annual fee to
4 maintain an active license as required by this article. The
5 license period begins on July 1 of each year and ends on
6 June 30 of the following year. If the license is granted for a
7 shorter period, then the license fee shall be computed
8 semiannually in proportion to the remainder of the fiscal
9 year: *Provided*, That if a licensee fails to complete a renewal
10 application and make payment of its annual license fee in
11 renewing its license on or before June 30 of any subsequent
12 year, after initial application, then an additional \$150
13 reactivation fee shall be charged and paid by the licensee;
14 the fee may not be prorated or refunded, prior to the
15 processing of any renewal application and applicable full
16 year annual license fee; and furthermore a licensee who
17 continues to operate upon the expiration of its license is
18 subject to all fines, penalties and sanctions available in §11-
19 16-23 of this code, all as determined by the commissioner.

20 (b) The annual license fees are as follows:

21 (1) Retail dealers shall be divided into two classes: Class
22 A and Class B.

23 (A) For a Class A retail dealer, the license fee is \$150
24 for each place of business; the license fee for social,
25 fraternal or private clubs not operating for profit, and having
26 been in continuous operation for two years or more
27 immediately preceding the date of application, is \$150:
28 *Provided*, That railroads operating in this state may dispense
29 nonintoxicating beer upon payment of an annual license tax

30 of \$10 for each dining, club or buffet car in which the beer
31 is dispensed.

32 Class A licenses issued for railroad dining, club or
33 buffet cars authorize the licensee to sell nonintoxicating
34 beer at retail for consumption only on the licensed premises
35 where sold. All other Class A licenses authorize the licensee
36 to sell nonintoxicating beer at retail for consumption on or
37 off the licensed premises.

38 (B) For a Class B retail dealer, the license fee,
39 authorizing the sale of both chilled and unchilled beer, is
40 \$150 for each place of business. A Class B license
41 authorizes the licensee to sell nonintoxicating beer at retail
42 in bottles, cans or other sealed containers only, and only for
43 consumption off the licensed premises. A Class B retailer
44 may sell to a patron, for personal use and not for resale,
45 quantities of draught beer in original containers that are no
46 larger in size than one-half barrel for off-premises
47 consumption.

48 A Class B license may be issued only to the proprietor
49 or owner of a grocery store. For the purpose of this article,
50 the term "grocery store" means any retail establishment
51 commonly known as a grocery store or delicatessen, and
52 caterer or party supply store, where food or food products
53 are sold for consumption off the premises, and includes a
54 separate and segregated portion of any other retail store
55 which is dedicated solely to the sale of food, food products
56 and supplies for the table for consumption off the premises.
57 Caterers or party supply stores are required to purchase the
58 appropriate licenses from the Alcohol Beverage Control
59 Administration.

60 (2) For a distributor, the license fee is \$1,000 for each
61 place of business.

62 (3) For a brewer or a resident brewer with its principal
63 place of business or manufacture located in this state and
64 who produces:

65 (A) Twelve thousand five hundred barrels or less of
66 nonintoxicating beer or nonintoxicating craft beer, the
67 license fee is \$500 for each place of manufacture;

68 (B) Twelve thousand five hundred one barrels and up to
69 25,000 barrels of nonintoxicating beer or nonintoxicating
70 craft beer, the license fee is \$1,000 for each place of
71 manufacture;

72 (C) More than 25,001 barrels of nonintoxicating beer or
73 nonintoxicating craft beer, the license fee is \$1,500 for each
74 place of manufacture.

75 (4) For a brewer whose principal place of business or
76 manufacture is not located in this state, the license fee is
77 \$1,500. The brewer is exempt from the requirements set out
78 in subsections (c), (d) and (e) of this section: *Provided*, That
79 a brewer whose principal place of business or manufacture
80 is not located in this state that produces less than 25,000
81 barrels of nonintoxicating beer or nonintoxicating craft beer
82 may choose to apply, in writing, to the commissioner to be
83 subject to the variable license fees of subdivision (3),
84 subsection (b) of this section and the requirements set out in
85 subsections (c), (d) and (e) of this section subject to
86 investigation and approval by the commissioner as to
87 brewer requirements.

88 (5) For a brewpub, the license fee is \$500 for each place
89 of manufacture.

90 (c) As part of the application or renewal application and
91 in order to determine a brewer or resident brewer's license
92 fee pursuant to this section, a brewer or resident brewer shall
93 provide the commissioner, on a form provided by the
94 commissioner, with an estimate of the number of
95 nonintoxicating beer or nonintoxicating craft beer barrels
96 and gallons it will produce during the year based upon the
97 production capacity of the brewer's or resident brewer's
98 manufacturing facilities, and the prior year's production and

99 sales volume of nonintoxicating beer or nonintoxicating
100 craft beer.

101 (d) On or before July 15 of each year, every brewer or
102 resident brewer who is granted a license shall file a final
103 report, on a form provided by the commissioner, that is
104 dated as of June 30 of each year, stating the actual volume
105 of nonintoxicating beer or nonintoxicating craft beer in
106 barrels and gallons produced at its principal place of
107 business and manufacture during the prior year.

108 (e) If the actual total production of nonintoxicating beer
109 or nonintoxicating craft beer by the brewer or resident
110 brewer exceeded the brewer's or resident brewer's estimate
111 that was filed with the application or renewal for a brewer's
112 or resident brewer's license for that period, then the brewer
113 or resident brewer shall include a remittance for the balance
114 of the license fee pursuant to this section that would be
115 required for the final, higher level of production.

116 (f) Any brewer or resident brewer failing to file the
117 reports required in subsections (c) and (d) of this section,
118 and who is not exempt from the reporting requirements,
119 shall, at the discretion of the commissioner, be subject to the
120 penalties set forth in §11-16-23 of this code.

121 (g) Notwithstanding subsections (a) and (b) of this
122 section, the license fee per event for a nonintoxicating beer
123 floor plan extension is \$100, and the fee may not be prorated
124 or refunded, and must be accompanied with a license
125 application, certification that the event meets certain
126 requirements in the code and rules, and such other
127 information as the commissioner may reasonably require, at
128 least 15 days prior to the event, all as determined by the
129 commissioner.

**§11-16-10. Brewer's license for foreign corporation;
application; bond; contents of application; limitations;
licensed representatives for brewers, resident brewers,
and distributors; annual license fee; renewal; suspension;**

license fee for sales representatives; transportation permits; container label registration; and Beer License Operations Fund created; and implementation operations of fee.

1 (a) A brewer's license shall be issued by the
2 commissioner to a foreign corporation which submits an
3 application therefor accompanied by the license fee
4 hereinafter prescribed, a certified copy of the certificate of
5 authority issued by the Secretary of State authorizing such
6 foreign corporation to transact business in the state, and a
7 certified copy of its most recent corporation charter. Such
8 application shall be verified and shall state:

9 (1) The name of the corporation and the state under the
10 laws of which it is incorporated;

11 (2) The date of incorporation;

12 (3) The address of the principal office of the
13 corporation;

14 (4) The names and respective addresses of the directors
15 and officers of the corporation;

16 (5) The date that such foreign corporation qualified to
17 transact business in this state; and

18 (6) Such other information as the commissioner, by rule
19 or regulation, may require.

20 (b) So long as the foreign corporation remains qualified
21 to transact business in this state so that the Secretary of State
22 can accept service of notice and process for such foreign
23 corporation, then, notwithstanding any other provision of
24 this article to the contrary, none of the officers and directors
25 of such foreign corporation need be residents of this state.

26 (c) The license fee for a brewer's license for a foreign
27 corporation selling any nonintoxicating beer product within
28 this state, whether or not its principal place of business be

29 located in this state, shall be \$1,500 per annum. The license
30 period shall begin on July 1 of each year and end on June 30
31 of the following year, and if granted for a lesser period, the
32 same shall be prorated semiannually in proportion to the
33 remainder of the fiscal year.

34 (d) As of July 1, 2019, there is an annual nonrefundable
35 and non-prorated operational fee for all brewers, resident
36 brewers, Class A retail dealers, Class B retail dealers, and
37 distributors of \$100 which shall be paid on or before July 1,
38 2019 and every July 1 thereafter. All fees collected by the
39 commissioner pursuant to this subsection shall be deposited
40 in a special revenue account in the State Treasury, hereby
41 created, to be known as the Beer License Operations Fund.
42 Moneys in the fund may only be expended by the
43 commissioner for the administration of this article, and as
44 appropriated by law.

45 (e) All representatives engaged in the selling,
46 marketing, merchandising, or the conducting of any other
47 sales on behalf of any brewer, resident brewer or distributor
48 of nonintoxicating beer shall be issued a license by the
49 commissioner. A licensee is subject to the provisions of
50 §11-16-23 of this code for violations of this article and the
51 rules promulgated thereunder. It is a violation of the code
52 and rules to operate without such license and is punishable
53 by the penalties available under this article. The
54 commissioner shall prescribe forms to complete such
55 licensure.

56 (f) Any brewer, resident brewer, distributor or any
57 person transporting nonintoxicating beer or nonintoxicating
58 craft beer for resale, and not for personal use, in or through
59 this state on behalf of such licensees or persons, or by
60 contract or other means, who is operating in this state may
61 only transport nonintoxicating beer or nonintoxicating craft
62 beer available for resale, and not personal use, in or through
63 this state. All vehicles transporting nonintoxicating beer or
64 nonintoxicating craft beer shall be issued a nonintoxicating
65 beer transportation permit. Transporting nonintoxicating

66 beer or nonintoxicating craft beer for resale, and not for
67 personal use, in or through this state without a
68 nonintoxicating beer transportation permit is in violation of
69 law and the penalties prescribed under §11-16-18 and §11-
70 16-23 of this code are applicable for any violation. The
71 commissioner shall prescribe forms to complete such
72 permitting.

73 (g) Any brewer or resident brewer offering
74 nonintoxicating beer or nonintoxicating craft beer for sale
75 under this article shall register, prior to offering such beer
76 for sale in the state, with the commissioner each
77 nonintoxicating beer or nonintoxicating craft beer container
78 label. No nonintoxicating beer or nonintoxicating craft beer
79 brand may be sold under this article unless all of such
80 nonintoxicating beer or nonintoxicating craft beer brand's
81 container labels for the product intended for sale in the state
82 have been registered and reviewed by the commissioner.
83 Prior to registration of any nonintoxicating beer or
84 nonintoxicating craft beer container labels, this review shall
85 include, but not be limited to, a review of the alcohol
86 content, corporate or product information, marketing and
87 advertising so that the nonintoxicating beer or
88 nonintoxicating craft beer container label is not intended to
89 be marketed to persons less than 21 years of age. The
90 commissioner shall remove all nonrenewed nonintoxicating
91 beer or nonintoxicating craft beer container labels, and any
92 licensee who sells nonintoxicating beer or nonintoxicating
93 craft beer with nonrenewed container labels shall be subject
94 to the penalties under §11-16-23 of this code. Failure to
95 register, obtain a review, and a certification for a
96 nonintoxicating beer or nonintoxicating craft beer container
97 label and failure to register such labels will subject the
98 brewer or resident brewer to penalties under said section.
99 The commissioner shall prescribe forms to complete such
100 registration.

101 (h) The licenses and permits issued under the provisions
102 of this section shall be renewed annually upon application

103 for renewal on a form prescribed by the commissioner and
104 payment of the annual license fee.

105 (i) If at any time a foreign corporation is no longer
106 qualified to transact business in this state, the Secretary of
107 State shall notify the commissioner of such fact and the
108 commissioner shall thereupon suspend the brewer's license
109 issued to such foreign corporation until such time as such
110 foreign corporation has again qualified to transact business
111 in this state and has otherwise complied with the provisions
112 of this section.

113 (j) Notwithstanding any other provision of this article to
114 the contrary, any corporation issued a brewer's license
115 under the provisions of this article shall not engage in the
116 business of a distributor or retailer as defined in this article.

**§11-16-11b. Special license for one-day charitable events;
application; license subject to provisions of article;
exception.**

1 (1) The commissioner may issue a special one-day
2 license to be designated a Class S1 license for the retail sale
3 of nonintoxicating beer and nonintoxicating craft beer to a
4 duly-organized nonprofit corporation, limited liability
5 entity, or an association having received federal tax exempt
6 status allowing the sale and serving of nonintoxicating beer
7 or nonintoxicating craft beer when raising money for
8 artistic, athletic, charitable, educational, or religious
9 purposes. The commissioner may not charge a fee to the
10 applicant that meets requirements for licensure. The special
11 license shall be issued for a term no longer than one day. No
12 more than six licenses may be issued to any single licensee
13 during any calendar year. The license application shall
14 contain a copy of the documents showing approved federal
15 tax-exempt status and other information required by the
16 commissioner and shall be submitted to the commissioner
17 at least 15 days prior to the event. Nonintoxicating beer
18 served and sold during the event shall be purchased from a
19 licensed distributor or resident brewer, acting in the limited

20 capacity of a distributor for its own products, that services
21 the location where the festival, fair, or other event is
22 occurring. All distributors and resident brewers in the area
23 must be notified in writing by mail, facsimile or electronic
24 mail of the event in advance and be presented with the
25 opportunity to participate in the event. Licensed
26 representatives of distributors, brewers, or resident brewers
27 may attend the one-day event and discuss their products, but
28 may not engage in the serving or selling of the
29 nonintoxicating beer or nonintoxicating craft beer. A
30 licensee licensed by this section may use bona fide
31 employees or volunteers of the charitable entity to sell and
32 serve nonintoxicating beer and nonintoxicating craft beer.

33 (2) A license issued under the provisions of this section
34 and the licensee holding the license are subject to all other
35 provisions of this article and the rules and orders of the
36 commissioner relating to the special license: *Provided*, That
37 the commissioner may by rule or order allow certain
38 waivers or exceptions with respect to those provisions,
39 rules, or orders as the circumstances of each event requires,
40 including, without limitation, the right to revoke or suspend
41 any license issued pursuant to this section prior to any notice
42 or hearing notwithstanding the provisions of §11-16-24 of
43 this code: *Provided, however*, That under no circumstances
44 may the provisions §11-16-18(a)(1), §11-16-18(a)(2), or
45 §11-16-18(a)(3) of this code, be waived or an exception
46 granted with respect to those provisions.

§11-16-12. When bond not required; bond of a Class A retail dealer; action on bond of retail dealer upon revocation of license; duty of prosecuting attorney.

1 (a) There shall be no bond for a brewer, resident brewer,
2 distributor, Class S brewpub license, as the license privilege
3 itself secures the payment of taxes and is subject to
4 suspension and revocation for failure to pay said taxes.

5 (b) Each Class A retail dealer, in addition to furnishing
6 the information required by this article, shall furnish, as

7 prerequisite to obtaining a license, a bond with some solvent
8 surety company as surety, to be approved by the
9 commissioner, payable to the State of West Virginia, in the
10 amount not less than \$500 nor more than \$1,000 within the
11 discretion of the commissioner. All such bonds shall be
12 conditioned for the faithful observance of the provisions of
13 this article, the rules, regulations and orders promulgated
14 pursuant thereto and of any other laws of the State of West
15 Virginia generally relating to the distribution, sale and
16 dispensing of nonintoxicating beer and shall be forfeited to
17 the state in the full amount of said bond upon the revocation
18 of the license of any such retail dealer. Such money received
19 by the state shall be credited to the State Fund, General
20 Revenue.

21 (c) Upon the revocation of the license of any Class A
22 retail dealer by the commissioner or by any court of
23 competent jurisdiction, the commissioner or the clerk of
24 said court shall notify the prosecuting attorney of the county
25 wherein such retail dealer's place of business is located, or
26 the prosecuting attorney of the county wherein the licensee
27 resides, of such revocation, and, upon receipt of said notice,
28 it shall be the duty of such prosecuting attorney forthwith to
29 institute appropriate proceedings for the collection of the
30 full amount of said bond. Upon request of such prosecuting
31 attorney, the commissioner shall deliver the bond to him.
32 Willful refusal without just cause therefor by the
33 prosecuting attorney to perform said duty hereby imposed
34 shall subject him or her to removal from office by the circuit
35 court of the county for which said prosecuting attorney was
36 elected upon proper proceedings and proof in the manner
37 provided by law.

§11-16-17a. Commissioner to investigate, review, and approve or deny franchise agreements, labels, brands, and line extensions.

1 (a) The commissioner shall investigate and review:

2 (1) All franchise agreements and any amendments to a
3 franchise agreement to verify compliance with this article
4 and the promulgated rules.

5 (2) The registration of all container labels for brands
6 manufactured, imported or sold in West Virginia, as further
7 specified in §11-16-10(g) of this code.

8 (3) The registration of all brands and line extensions
9 with the commissioner that are the subject of a franchise
10 agreement or an amendment to a franchise agreement.

11 (4) The appointment of all brands or line extensions to
12 a distributor in a brewer's established franchise distributor
13 network and to that distributor's assigned territory from the
14 brewer.

15 (5) The appointment of all brands or line extensions
16 acquired by a brewer as either an acquiring brewer,
17 successor brewer and also any successor entities of a
18 brewer, as specified in §11-16-21(a)(3) of this code, to the
19 distributor in the selling brewer's established franchise
20 distributor network and to that distributor's assigned
21 territory.

22 (b) The commissioner's investigation and review under
23 subsection (a) of this section may include, but is not limited
24 to: the brewer, its subsidiaries, parent entities, contracted
25 entities, affiliated entities, associated entities or any other
26 related entities, the brewer's corporate structure, the nature
27 of the relatedness of various entities, ownership, trade
28 names or partial trade names, logos, copyrights, trademarks
29 or trade design, product codes, marketing and advertising,
30 promotion or pricing.

31 (c) The commissioner may approve or deny any item
32 listed in subsection (a) of this section as determined by the
33 commissioner in accordance with this article, the
34 promulgated rules as the facts and circumstances dictate.

35 (d) Any brewer adversely affected by a denial as
36 specified in subdivision (3) or (4), subsection (a) of this
37 section, may request, in writing, a final written
38 determination from the commissioner.

39 (e) Upon receipt of final determination as provided in
40 subsection (d) of this section, a brewer may request an
41 administrative hearing by filing a written petition and as
42 otherwise required per §11-16-24 of this code and the rules
43 promulgated by the commissioner. Upon filing a written
44 petition, the brewer shall file a \$1,000 hearing deposit, via
45 certified check or money order, to cover the costs of the
46 hearing. Such certified check or money order shall be made
47 payable to the commissioner. In any such hearing held by
48 the request of a brewer, the burden of proof is on the brewer
49 and the standard of review for the administrative hearing is
50 by a preponderance of the evidence.



CHAPTER 17

(Com. Sub. for S. B. 561 - By Senators Trump, Takubo and Boso)

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

AN ACT to amend and reenact §7-1-3ss of the Code of West Virginia, 1931, as amended; to amend and reenact §11-16-18 of said code; to amend said code by adding thereto two new sections, designated §60-2-17a and §60-2-17b; to amend and reenact §60-6-7, §60-6-8, and §60-6-9 of said code; to amend and reenact §60-7-2, §60-7-3, §60-7-4, §60-7-5, §60-7-6, and §60-7-12 of said code; to amend said code by adding thereto two new sections, designated §60-7-6a and §60-7-8a; to amend and reenact §60-8-34 of said code; and to amend and reenact §61-8-27 of said code, all relating to alcoholic

beverages generally; creating a county option election on forbidding nonintoxicating beer, wine, or alcoholic liquors to be sold, given, or dispensed after 10:00 a.m. on Sundays in lieu of a county option election to permit such sales; delineating hours of unlawful sale on a Sunday generally; permitting the Alcohol Beverage Control Administration to request the assistance of law enforcement; limiting the jurisdiction of such requested law-enforcement assistance; implementing a \$100 operations fee and establishing special revenue account and fund; clarifying that consumption of alcoholic liquors in public is unlawful; clarifying that West Virginia licensees can only sell liquor by the drink with certain exceptions; clarifying prohibition on liquor bottle sales in Class A licenses; providing for a bottle service fee and establishing requirements for bottle service; clarifying certain licensing requirements for licensure; providing guidance on certain lawful conduct such as wine bottle sales and frozen drink machines; forbidding the operation of certain bring your own bottle establishments; creating a private fair and festival license; definitions; license requirements; license fee; creating the private hotel license and license fee; creating a private nine-hole golf course license and fee; removing the need for golf carts to be offered at licensed golf courses; definitions; license requirements; license fee; permitting a private resort hotel to have inner-connection with a resident brewer who has a brewpub; providing a 30-day requirement to issue or deny a completed license application; creating a reactivation fee for licensees who fail to timely file their renewal application and pay their annual license fees; permitting a license privilege for certain licensees to operate a connected but separately operated Class A on-premises license and a Class B off-premises license; clarifying that certain state-licensed gaming is permissible in a private club; clarifying permitted hours of operation for certain licensees; clarifying unlawful Sunday sales for certain wine licensees; and permitting minors to attend a private hotel, private nine-hole golf course, and a private fair or festival under certain conditions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**ARTICLE 1. COUNTY COMMISSIONS GENERALLY.****§7-1-3ss. County option election on forbidding nonintoxicating beer, wine, or alcoholic liquors to be sold, given, or dispensed after 10:00 a.m. on Sundays.**

1 Beginning July 1, 2019, the county commission of any
2 county may conduct a county option election on the
3 question of whether the sale or dispensing of
4 nonintoxicating beer, wine, or alcoholic liquors in or on a
5 licensed premises shall be allowed in the county beginning
6 1:00 p.m. on any Sunday, as provided in §11-16-18 of this
7 code, §60-7-12 of this code, §60-8-34 of this code upon
8 approval as provided in this section. The option election on
9 this question may be placed on the ballot in each county at
10 any primary or general election. The county commission of
11 the county shall give notice to the public of the election by
12 publication of the notice as a Class II-0 legal advertisement
13 in compliance with the provisions of §60-59-3 of this code,
14 and the publication area for publication shall be the county
15 in which the election is to be held. The date of the last
16 publication of the notice shall fall on a date within the period
17 of the 14 consecutive days next preceding the election. On
18 the local option election ballot shall be printed the
19 following: “Shall the beginning hour at which
20 nonintoxicating beer, wine, and alcoholic liquor be sold or
21 dispensed for licensed on-premises consumption only in
22 _____ County on Sundays be changed from 10:00 a.m.
23 to 1:00 p.m.

24 If approved by the voters this would forbid private clubs
25 and restaurants licensed to sell and dispense nonintoxicating
26 beer, wine, and alcoholic liquor; licensed private wine
27 restaurants, private wine spas, and private wine bed and
28 breakfasts to sell and dispense wine; and licensed Class A
29 retail dealers to sell and dispense nonintoxicating beer for
30 on-premises consumption until 1:00 p.m.

31 [] Yes [] No

32 (Place a cross mark in the square opposite your choice.)

33 The ballots shall be counted, returns made and
34 canvassed as in general elections, and the results certified
35 by the commissioners of election to the county commission.
36 The county commission shall, without delay, certify the
37 result of the election. Upon receipt of the results of the
38 election, in the event a majority of the votes are marked
39 “Yes”, all applicable licensees shall be forbidden to sell and
40 dispense beer, wine, or alcoholic liquors until 1:00 p.m. on
41 Sundays. In the event a majority of the votes are marked
42 “No”, all applicable licensees will continue to be required
43 to comply with existing law.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-18. Unlawful acts of licensees; criminal penalties.

1 (a) It shall be unlawful:

2 (1) For any licensee, his, her, its or their servants,
3 agents, or employees to sell, give, or dispense, or any
4 individual to drink or consume, in or on any licensed
5 premises or in any rooms directly connected,
6 nonintoxicating beer or cooler on weekdays between the
7 hours of 2:00 a.m. and 7:00 a.m., or between the hours of
8 2:00 a.m. and 10:00 a.m., or a Class A retail dealer who sells
9 nonintoxicating beer for on-premises consumption only
10 between the hours of 2:00 a.m. and 1:00 p.m. in any county
11 upon approval as provided for in §7-1-3ss of this code, on
12 any Sunday, except in private clubs licensed under the
13 provisions of §60-7-1 *et seq.* of this code, where the hours
14 shall conform with the hours of sale of alcoholic liquors;

15 (2) For any licensee, his, her, its or their servants,
16 agents, or employees to sell, furnish, or give any
17 nonintoxicating beer, as defined in this article, to any person

18 visibly or noticeably intoxicated or to any person known to
19 be insane or known to be a habitual drunkard;

20 (3) For any licensee, his, her, its or their servants,
21 agents, or employees to sell, furnish, or give any
22 nonintoxicating beer as defined in this article to any person
23 who is less than 21 years of age;

24 (4) For any distributor to sell or offer to sell, or any
25 retailer to purchase or receive, any nonintoxicating beer as
26 defined in this article, except for cash and no right of action
27 shall exist to collect any claims for credit extended contrary
28 to the provisions of this subdivision. Nothing herein
29 contained in this section prohibits a licensee from crediting
30 to a purchaser the actual price charged for packages or
31 containers returned by the original purchaser as a credit on
32 any sale, or from refunding to any purchaser the amount
33 paid or deposited for the containers when title is retained by
34 the vendor: *Provided*, That a distributor may accept an
35 electronic transfer of funds if the transfer of funds is
36 initiated by an irrevocable payment order on the invoiced
37 amount for the nonintoxicating beer. The cost of the
38 electronic fund transfer shall be borne by the retailer and the
39 distributor shall initiate the transfer no later than noon of
40 one business day after the delivery;

41 (5) For any brewer or distributor or brew-pub or his, her,
42 its or their agents to transport or deliver nonintoxicating
43 beer as defined in this article to any retail licensee on
44 Sunday;

45 (6) For any brewer or distributor to give, furnish, rent,
46 or sell any equipment, fixtures, signs, or supplies directly or
47 indirectly or through a subsidiary or affiliate to any licensee
48 engaged in selling products of the brewing industry at retail
49 or to offer any prize, premium, gift, or other similar
50 inducement, except advertising matter of nominal value, to
51 either trade or consumer buyers: *Provided*, That a
52 distributor may offer, for sale or rent, tanks of carbonic gas.
53 Nothing herein contained in this section prohibits a brewer

54 from sponsoring any professional or amateur athletic event
55 or from providing prizes or awards for participants and
56 winners in any events: *Provided, however,* That no event
57 shall be sponsored which permits actual participation by
58 athletes or other persons who are minors, unless specifically
59 authorized by the commissioner;

60 (7) For any licensee to permit in his or her premises any
61 lewd, immoral or improper entertainment, conduct, or
62 practice;

63 (8) For any licensee except the holder of a license to
64 operate a private club issued under the provisions of §60-7-
65 1 *et seq.* of this code or a holder of a license or a private
66 wine restaurant issued under the provisions of §60-8-1 *et*
67 *seq.* of this code to possess a federal license, tax receipt or
68 other permit entitling, authorizing, or allowing the licensee
69 to sell liquor or alcoholic drinks other than nonintoxicating
70 beer;

71 (9) For any licensee to obstruct the view of the interior
72 of his or her premises by enclosure, lattice, drapes, or any
73 means which would prevent plain view of the patrons
74 occupying the premises. The interior of all licensed
75 premises shall be adequately lighted at all times: *Provided,*
76 That provisions of this subdivision do not apply to the
77 premises of a Class B retailer, the premises of a private club
78 licensed under the provisions of §60-7-1 *et seq.* of this code,
79 or the premises of a private wine restaurant licensed under
80 the provisions of §60-8-1 *et seq.* of this code;

81 (10) For any licensee to manufacture, import, sell, trade,
82 barter, possess, or acquiesce in the sale, possession, or
83 consumption of any alcoholic liquors on the premises
84 covered by a license or on premises directly or indirectly
85 used in connection with it: *Provided,* That the prohibition
86 contained in this subdivision with respect to the selling or
87 possessing or to the acquiescence in the sale, possession, or
88 consumption of alcoholic liquors is not applicable with
89 respect to the holder of a license to operate a private club

90 issued under the provisions of §60-7-1 *et seq.* of this code
91 nor shall the prohibition be applicable to a private wine
92 restaurant licensed under the provisions of §60-8-1 *et seq.*
93 of this code insofar as the private wine restaurant is
94 authorized to serve wine;

95 (11) For any retail licensee to sell or dispense
96 nonintoxicating beer, as defined in this article, purchased,
97 or acquired from any source other than a distributor, brewer,
98 or manufacturer licensed under the laws of this state;

99 (12) For any licensee to permit loud, boisterous, or
100 disorderly conduct of any kind upon his or her premises or
101 to permit the use of loud musical instruments if either or any
102 of the same may disturb the peace and quietude of the
103 community where the business is located: *Provided*, That a
104 licensee may have speaker systems for outside broadcasting
105 so long as the noise levels do not create a public nuisance or
106 violate local noise ordinances;

107 (13) For any person whose license has been revoked, as
108 provided in this article, to obtain employment with any
109 retailer within the period of one year from the date of the
110 revocation, or for any retailer to knowingly employ that
111 person within the specified time;

112 (14) For any distributor to sell, possess for sale,
113 transport, or distribute nonintoxicating beer except in the
114 original container;

115 (15) For any licensee to knowingly permit any act to be
116 done upon the licensed premises, the commission of which
117 constitutes a crime under the laws of this state;

118 (16) For any Class B retailer to permit the consumption
119 of nonintoxicating beer upon his or her licensed premises;

120 (17) For any Class A licensee, his, her, its or their
121 servants, agents, or employees, or for any licensee by or
122 through any servants, agents, or employees, to allow, suffer,
123 or permit any person less than 18 years of age to loiter in or

124 upon any licensed premises; except, however, that the
125 provisions of this subdivision do not apply where a person
126 under the age of 18 years is in or upon the premises in the
127 immediate company of his or her parent or parents, or where
128 and while a person under the age of 18 years is in or upon
129 the premises for the purpose of and actually making a lawful
130 purchase of any items or commodities therein sold, or for
131 the purchase of and actually receiving any lawful service
132 therein rendered, including the consumption of any item of
133 food, drink or soft drink therein lawfully prepared and
134 served or sold for consumption on the premises;

135 (18) For any distributor to sell, offer for sale, distribute,
136 or deliver any nonintoxicating beer outside the territory
137 assigned to any distributor by the brewer or manufacturer of
138 nonintoxicating beer or to sell, offer for sale, distribute, or
139 deliver nonintoxicating beer to any retailer whose principal
140 place of business or licensed premises is within the assigned
141 territory of another distributor of such nonintoxicating beer:
142 *Provided*, That nothing in this section is considered to
143 prohibit sales of convenience between distributors licensed
144 in this state where one distributor sells, transfers, or delivers
145 to another distributor a particular brand or brands for sale at
146 wholesale; and

147 (19) For any licensee or any agent, servant, or employee
148 of any licensee to knowingly violate any rule lawfully
149 promulgated by the commissioner in accordance with the
150 provisions of chapter 29A of this code.

151 (b) Any person who violates any provision of this article
152 including, but not limited to, any provision of this section,
153 or any rule, or order lawfully promulgated by the
154 commissioner, or who makes any false statement
155 concerning any material fact in submitting application for
156 license or for a renewal of a license or in any hearing
157 concerning the revocation thereof, or who commits any of
158 the acts herein declared to be unlawful is guilty of a
159 misdemeanor and, upon conviction thereof, shall be
160 punished for each offense by a fine of not less than \$25, nor

161 more than \$500, or confined in the county or regional jail
162 for not less than 30 days nor more than six months, or by
163 both fine and confinement. Magistrates have concurrent
164 jurisdiction with the circuit court and any other courts
165 having criminal jurisdiction in their county for the trial of
166 all misdemeanors arising under this article.

167 (c) (1) A Class B licensee that:

168 (A) Has installed a transaction scan device on its
169 licensed premises; and

170 (B) Can demonstrate that it requires each employee,
171 servant, or agent to verify the age of any individual to whom
172 nonintoxicating beer is sold, furnished, or given away by the
173 use of the transaction device may not be subject to: (i) Any
174 criminal penalties whatsoever, including those set forth in
175 subsection (b) of this section; (ii) any administrative
176 penalties from the commissioner; or (iii) any civil liability
177 whatsoever for the improper sale, furnishing, or giving
178 away of nonintoxicating beer to an individual who is less
179 than 21 years of age by one of his or her employees,
180 servants, or agents. Any agent, servant, or employee who
181 has improperly sold, furnished or given away
182 nonintoxicating beer to an individual less than 21 years of
183 age is subject to the criminal penalties of subsection (b) of
184 this section. Any agent, servant, or employee who has
185 improperly sold, furnished, or given away nonintoxicating
186 beer to an individual less than 21 years of age is subject to
187 termination from employment, and the employer shall have
188 no civil liability for the termination.

189 (2) For purposes of this section, a Class B licensee can
190 demonstrate that it requires each employee, servant, or
191 agent to verify the age of any individual to whom
192 nonintoxicating beer is sold by providing evidence: (A)
193 That it has developed a written policy which requires each
194 employee, servant, or agent to verify the age of each
195 individual to whom nonintoxicating beer will be sold,
196 furnished, or given away; (B) that it has communicated this

197 policy to each employee, servant, or agent; and (C) that it
198 monitors the actions of its employees, servants, or agents
199 regarding the sale, furnishing, or giving away of
200 nonintoxicating beer and that it has taken corrective action
201 for any discovered noncompliance with this policy.

202 (3) “Transaction scan” means the process by which a
203 person checks, by means of a transaction scan device, the
204 age, and identity of the cardholder, and “transaction scan
205 device” means any commercial device or combination of
206 devices used at a point of sale that is capable of deciphering
207 in an electronically readable format the information
208 enclosed on the magnetic strip or bar code of a driver’s
209 license or other governmental identity card.

210 (d) Nothing in this article nor any rule or regulation of
211 the commissioner shall prevent or be considered to prohibit
212 any licensee from employing any person who is at least 18
213 years of age to serve in the licensee’s lawful employ,
214 including the sale or delivery of nonintoxicating beer as
215 defined in this article. With the prior approval of the
216 commissioner, a licensee whose principal business is the
217 sale of food or consumer goods or the providing of
218 recreational activities, including, but not limited to,
219 nationally franchised fast food outlets, family oriented
220 restaurants, bowling alleys, drug stores, discount stores,
221 grocery stores, and convenience stores, may employ persons
222 who are less than 18 years of age but at least 16 years of
223 age: *Provided*, That the person’s duties may not include the
224 sale or delivery of nonintoxicating beer or alcoholic liquors:
225 *Provided, however*, That the authorization to employ
226 persons under the age of 18 years shall be clearly indicated
227 on the licensee’s license.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

§60-2-17a. Law enforcement cooperation.

1 In addition to the assistance of law enforcement
2 provided under §15-2-12 of this code, the commissioner
3 may obtain assistance in the enforcement of §11-16-1 *et seq.*
4 and §60-1-1 *et seq.* of this code from county or municipal
5 law-enforcement agencies by making a written request
6 therefor. The assistance authorized by this section is limited
7 only to accompanying the commissioner and his or her
8 agents and may not be unreasonably withheld. Any law-
9 enforcement officer acting pursuant to this section may
10 further act upon crimes committed in his or her presence:
11 *Provided*, That any officer so acting must be within his or
12 her geographic jurisdiction, and nothing in this section
13 authorizes any officer to act outside of the scope of his or
14 her geographic jurisdiction.

§60-2-17b. Wine and liquor operating fund established; operations fee; fund issues.

1 (a) As of July 1, 2019, there is an annual nonrefundable
2 and nonprorated operational fee of \$100 for all distilleries,
3 mini-distilleries, wineries, farm wineries, Class A retail
4 licensees, Class B retail licensees, private clubs, private
5 wine retailers, wine specialty shops, wine restaurants,
6 private wine spas, private wine bed and breakfasts, wine
7 suppliers, and wine distributors which shall be paid on or
8 before July 1, 2019, and every July 1 thereafter. All fees
9 collected by the commissioner pursuant to this section shall
10 be deposited in a special revenue account in the State
11 Treasury, hereby created, to be known as the Wine and
12 Liquor Operations Fund. Moneys in the fund may only be
13 expended by the commissioner for the administration of this
14 chapter, as appropriated by law.

15 (b) Licensees holding multiple licenses for
16 nonintoxicating beer, nonintoxicating craft beer, wine, or
17 liquor shall be subject to paying only one operations fee of
18 \$100 under this chapter and under §11-16-10(d) of this
19 code.

ARTICLE 6. MISCELLANEOUS PROVISIONS.**§60-6-7. Specific acts forbidden; indictment.**

1 A person shall not:

2 (1) Manufacture or sell in this state without a license any
3 alcoholic liquor, except as permitted by this article;

4 (2) Aid or abet in the manufacture or sale of alcoholic
5 liquor without a license, except as permitted by this article;

6 (3) Sell or tender without a license any alcoholic liquor
7 other than permitted by this article;

8 (4) Adulterate any alcoholic liquor by the addition of
9 any drug, methyl alcohol, crude, unrectified or impure form
10 of ethyl alcohol, or other foreign or deleterious substance or
11 liquid;

12 (5) Refill, with alcoholic liquor, any bottle or other
13 container in which alcoholic liquor has been sold at retail in
14 this state;

15 (6) Advertise any alcoholic liquor in this state except in
16 accordance with the rules and regulations of the
17 commissioner; or

18 (7) Distribute, deal in, process, or use crowns, stamps,
19 or seals required under the authority of this chapter, except
20 in accordance with the rules and regulations prescribed by
21 the commissioner; or

22 (8) Manufacture or sell, aid or abet in the manufacture
23 or sale, possess, transport or ship, use, or in any other
24 manner provide or furnish powdered alcohol.

25 A person who violates any provision of this section shall
26 be guilty of a misdemeanor and, upon conviction, shall be
27 fined not less than \$50 nor more than \$500, or confined in
28 jail not less than 30 days nor more than one year or both
29 such fine and imprisonment, for the first offense. Upon

30 conviction of a second or subsequent offense, the court may
 31 in its discretion impose a penalty of confinement in the
 32 penitentiary for a period not to exceed three years. A person
 33 who violates any provision of this section for the second or
 34 any subsequent offense under this section, is guilty of a
 35 felony and, upon conviction thereof, shall be imprisoned in
 36 a state correctional facility for a period not to exceed three
 37 years.

38 An indictment for any first violation of subdivisions (1),
 39 (2), and (3) of this section, or any of them, shall be sufficient
 40 if in form or effect as follows:

41 State of West Virginia

42 County of, to wit:

43 The Grand Jurors of the State of West Virginia, in and
 44 for the body of the County of, upon their oaths
 45 present that, on the day of, 20...., in the
 46 said County of, did unlawfully, without a State
 47 license and without authorization under the Alcohol
 48 Beverage Control Act, manufacture and sell, and aid and
 49 abet in the manufacture and sale of a quantity of alcoholic
 50 liquor, against the peace and dignity of the state.

51 Any indictment under this section shall otherwise be in
 52 conformity with §62-9-1 *et seq.* of this code.

§60-6-8. Unlawful sale or possession by licensee.

1 A licensed person shall not:

2 (1) Sell, furnish, tender, or serve alcoholic liquors of a
 3 kind other than that which such license or this chapter
 4 authorizes him or her to sell;

5 (2) Sell, furnish, tender, or serve beer to which wine,
 6 spirits, or alcohol has been added;

7 (3) Sell, furnish, tender, or serve wine to which other
 8 alcoholic spirits have been added, otherwise than as

9 required in the manufacture thereof under regulations of the
10 commission;

11 (4) Sell, furnish, tender, or serve alcoholic liquors to a
12 person specified in §60-3-22 of this code;

13 (5) Sell, furnish, tender, or serve alcoholic liquors
14 except as authorized by his or her license;

15 (6) Sell, furnish, tender, or serve alcoholic liquors other
16 than by the drink, poured from the alcoholic liquors'
17 original container: *Provided*, That under certain
18 requirements exceptions to liquor by the drink are as
19 follows:

20 (A) A private club licensed under §60-7-1 *et seq.* of this
21 code, that is in good standing with the commissioner and
22 has paid a \$1000 on-premises only bottle service fee to the
23 commissioner, may sell or serve liquor by the bottle to two
24 or more persons for consumption on the licensed premises
25 only, and any liquor bottle sold by such a private club shall
26 be sold at retail for personal use, and not for resale, to a
27 person for not less than 300 percent of the private club's
28 cost, and no such liquor bottle shall be removed from the
29 licensed premises by any person or the licensee; and

30 (B) A Class A licensee licensed under §60-8-1 *et seq.* of
31 this code may sell or serve wine by the bottle to two or more
32 persons for consumption on the licensed premises only,
33 unless such licensee has obtained a license or privilege
34 authorizing other activity;

35 (7) Sell, furnish, tender, or serve pre-mixed alcoholic
36 liquor that is not in the original container: *Provided*, That a
37 licensee may sell, furnish, tender, and serve pre-mixed
38 beverages consisting of alcoholic liquors, nonalcoholic
39 mixer, and ice if:

40 (A) The frozen drink mixing machine is emptied and
41 sanitized daily; and

42 (B) That a written record reflecting the cleaning and
43 sanitizing of the frozen drink machine is maintained for
44 inspection by the commissioner and health inspectors;

45 (8) Sell, furnish, tender, or serve any alcoholic liquor
46 when forbidden by the provisions of this chapter;

47 (9) Sell, possess, possess for sale, tender, serve, furnish,
48 or provide any powdered alcohol;

49 (10) Keep on the premises covered by his or her license
50 alcoholic liquor other than that which he or she is authorized
51 to sell, furnish, tender, or serve by such license or by this
52 chapter.

53 A person who violates any provision of this section shall
54 be guilty of a misdemeanor and, upon conviction, shall be
55 fined not less than \$50 nor more than \$500 or confined in
56 jail not less than 30 days nor more than one year, or both
57 such fine and confinement for the first offense. Upon
58 conviction of a second or subsequent offense, the court may
59 in its discretion impose a penalty of confinement in a state
60 correctional facility for a period not to exceed three years.
61 A person who violates any provision of this section for the
62 second or any subsequent offense under this section is guilty
63 of a felony and, upon conviction thereof, shall be
64 imprisoned in a state correctional facility for a period not to
65 exceed three years.

§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence; penalties.

1 (a) A person may not:

2 (1) Appear in a public place in an intoxicated condition;

3 (2) Drink alcoholic liquor in a public place;

4 (3) Tender a drink of alcoholic liquor to another person
5 in a public place;

6 (4) Operate a business without a license issued under
7 §60-1-1 *et seq.* of this code which knowingly facilitates the
8 consumption of alcoholic liquors in a public place by
9 providing for on-site items such as cups, glasses, ice, and
10 nonalcoholic beverages used to mix with alcoholic liquors,
11 refrigeration, or on-site storage of alcoholic liquors in a
12 lounge area or space for persons to gather, perhaps offering
13 musical entertainment, exotic dancing, or other such nude
14 entertainment, or other similar activity or entertainment.
15 Such business may be commonly known as a “bring your
16 own bottle”, “bring your own booze”, or “BYOB”
17 establishments;

18 (5) Possess alcoholic liquor in the amount in excess of
19 10 gallons, in containers not bearing stamps or seals of the
20 commissioner, without having first obtained written
21 authority from the commissioner therefor; or

22 (6) Possess any alcoholic liquor which was
23 manufactured or acquired in violation of the provisions of
24 this chapter.

25 (b) Any law-enforcement officer may arrest without a
26 warrant and take the following actions against a person who,
27 in his or her presence, violates subdivision (1), subsection
28 (a) of this section: (1) If there is some nonintoxicated person
29 who will accept responsibility for the intoxicated person, the
30 officer may issue the intoxicated person a citation
31 specifying a date for appearance before a judicial officer and
32 release him or her to the custody of the individual accepting
33 responsibility: *Provided*, That the issuance of a citation shall
34 be used whenever feasible; (2) if it does not impose an
35 undue burden on the officer, he or she may, after issuance
36 of a citation, transport the individual to the individual’s
37 present residence, or arrange for the transportation; (3) if the
38 individual is incapacitated or the alternatives provided in
39 subdivisions (1) and (2) of this subsection are not possible,
40 the officer shall transport or arrange for transportation to the
41 appropriate judicial officer; or (4) if the individual is
42 incapacitated and, in the law-enforcement officer’s

43 judgment, is in need of acute medical attention, that officer
44 shall arrange for transportation by ambulance or otherwise
45 to a hospital emergency room. The officer shall accompany
46 the individual until he or she is discharged from the
47 emergency room or admitted to the hospital. If the
48 individual is released from the emergency room, the officer
49 may proceed as described in subdivisions (1), (2), and (3) of
50 this subsection. If the individual is admitted to the hospital,
51 the officer shall issue a citation to the individual specifying
52 a date for appearance before a judicial officer.

53 (c) Upon presentment before the proper judicial officer,
54 the law-enforcement officer serves as the chief complaining
55 witness. The judicial officer shall determine if there is
56 probative evidence that the individual may be guilty of the
57 charge of public intoxication. If such evidence is not
58 presented, the charge shall be dismissed and the individual
59 released. If sufficient evidence is presented, the judicial
60 officer shall issue a warrant and establish bail or issue a
61 summons to the individual. Once a warrant or summons has
62 been issued, the following actions may be taken:

63 (1) If the individual is no longer incapacitated, he or she
64 may be released;

65 (2) If the individual is still incapacitated but a
66 nonintoxicated person is available to accept responsibility
67 for him or her, he or she may be released to the responsible
68 person; or

69 (3) If the individual is still incapacitated and no
70 responsible person is available, the judicial officer shall
71 proceed under §27-5-1 *et seq.* and §27-6A-1 *et seq.* of this
72 code.

73 (d) Any law-enforcement officer may arrest and hold in
74 custody, without a warrant, until complaint may be made
75 before a judicial officer and a warrant or summons issued,
76 any person who in the presence of the law-enforcement
77 officer violates any one or more of subdivisions (1) through

78 (6), subsection (a) of this section: *Provided*, That the law-
79 enforcement officer may use reasonable force to prevent
80 harm to himself or herself, the individual arrested, or others
81 in carrying out the provisions of this section.

82 (e) Any person who violates subdivision (1), subsection
83 (a) of this section is guilty of a misdemeanor and, upon
84 conviction thereof, shall be sentenced by a judicial officer
85 in accordance with the following options:

86 (1) Upon first offense, a fine of not less than \$5 nor more
87 than \$100. If the individual, prior, to conviction, agrees to
88 voluntarily attend an alcohol education program of not more
89 than six hours duration at the nearest community mental
90 health — mental retardation center, the judicial officer may
91 delay sentencing until the program is completed and upon
92 completion may dismiss the charges;

93 (2) Upon conviction for a second offense, a fine of not
94 less than \$5 nor more than \$100 and not more than 60 days
95 in jail or completion of not less than five hours of
96 alcoholism counseling at the nearest community mental
97 health — mental retardation center;

98 (3) Upon third and subsequent convictions, a fine of not
99 less than \$5 nor more than \$100 and not less than five nor
100 more than 60 days in jail or a fine of not less than \$5 nor
101 more than \$100 and completion of not less than five hours
102 of alcoholism counseling at the nearest community mental
103 health — mental retardation center: *Provided*, That three
104 convictions for public intoxication within the preceding six
105 months is considered evidence of alcoholism. For the
106 educational counseling programs described in this
107 subsection the community mental health — mental
108 retardation center may charge each participant its usual and
109 customary fee and shall certify in writing to the referring
110 judicial officer the completion or failure to complete the
111 prescribed program for each individual.

112 (f) A person charged with a violation of subdivision (1),
113 subsection (a) of this section who is an alcoholic shall be
114 found not guilty by reason of addiction and proper
115 disposition made pursuant to §27-5-1 *et seq.* and §27-6A-1
116 *et seq.* of this code.

117 (g) Any person who violates subdivision (2), subsection
118 (a) of this section is guilty of a misdemeanor and, upon
119 conviction thereof, shall be fined not less than \$5 nor more
120 than \$100; and upon a second or subsequent conviction
121 thereof, shall be fined not less than \$5 nor more than \$100,
122 or confined in jail not more than 60 days, or both.

123 (h) Any person who violates subdivision (3), subsection
124 (a) of this section is guilty of a misdemeanor and, upon
125 conviction thereof, shall be fined not less than \$5 nor more
126 than \$100, or confined in jail not more than 60 days, or both.

127 (i) Any person who violates subdivision (5) or (6),
128 subsection (a) of this section is guilty of a misdemeanor and,
129 upon his or her first conviction, shall be fined not less than
130 \$100 nor more than \$500; and upon conviction of second or
131 subsequent offense, he or she is guilty of a felony and, shall
132 be confined in a state correctional facility for a period of not
133 less than one year nor more than three years.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-2. Definitions; power to lease building for establishment of private club.

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

3 (a) “Applicant” means a private club applying for a
4 license under the provisions of this article.

5 (b) “Code” means the official Code of West Virginia,
6 1931, as amended.

7 (c) "Commissioner" means the West Virginia Alcohol
8 Beverage Control Commissioner.

9 (d) "Licensee" means the holder of a license to operate
10 a private club granted under this article, which license shall
11 remain unexpired, unsuspended, and unrevoked.

12 (e) "Private club" means any corporation or
13 unincorporated association which either: (1) Belongs to or
14 is affiliated with a nationally recognized fraternal or
15 veterans' organization which is operated exclusively for the
16 benefit of its members, which pays no part of its income to
17 its shareholders or individual members, which owns or
18 leases a building or other premises to which club are
19 admitted only duly elected or approved dues-paying
20 members in good standing of the corporation or association
21 and their guests while in the company of a member and to
22 which club the general public is not admitted, and which
23 club maintains in the building or on the premises a suitable
24 kitchen and dining facility with related equipment for
25 serving food to members and their guests; or (2) is a
26 nonprofit social club, which is operated exclusively for the
27 benefit of its members, which pays no part of its income to
28 its shareholders or individual members, which owns or
29 leases a building or other premises to which club are
30 admitted only duly elected or approved dues-paying
31 members in good standing of the corporation or association
32 and their guests while in the company of a member and to
33 which club the general public is not admitted, and which
34 club maintains in the building or on the premises a suitable
35 kitchen and dining facility with related equipment for
36 serving food to members and their guests; or (3) is organized
37 and operated for legitimate purposes which has at least 100
38 duly elected or approved dues-paying members in good
39 standing, which owns or leases a building or other premises,
40 including any vessel licensed or approved by any federal
41 agency to carry or accommodate passengers on navigable
42 waters of this state, to which club are admitted only duly
43 elected or approved dues-paying members in good standing

44 of the corporation or association and their guests while in
45 the company of a member and to which club the general
46 public is not admitted, and which club maintains in the
47 building or on the premises a suitable kitchen and dining
48 facility with related equipment and employs a sufficient
49 number of persons for serving meals to members and their
50 guests; or (4) is organized for legitimate purposes and owns
51 or leases a building or other delimited premises in any state,
52 county or municipal park or at any airport, in which building
53 or premises a club has been established, to which club are
54 admitted only duly elected and approved dues-paying
55 members in good standing and their guests while in the
56 company of a member and to which club the general public
57 is not admitted, and which maintains in connection with the
58 club a suitable kitchen and dining facility and related
59 equipment and employs a sufficient number of persons for
60 serving meals in the club to the members and their guests.

61 (f) "Private fair and festival" means an applicant for a
62 private club or a licensed private club meeting the
63 requirements of §60-7-8a of this code for a temporary event,
64 and the criteria set forth in this subsection which:

65 (1) Has at least 100 members;

66 (2) Has been sponsored, endorsed, or approved, in
67 writing, by the governing body (or its duly elected or
68 appointed officers) of either the municipality or of the
69 county wherein the festival, fair, or other event is to be
70 conducted;

71 (3) Shall prepare, provide, or engage a food caterer to
72 provide adequate freshly prepared food or meals to serve its
73 stated members and guests who will be attending the
74 temporary festival, fair, or other event, and further shall
75 provide any documentation or agreements of such to the
76 commissioner prior to approval;

77 (4) Shall not use third-party entities or individuals to
78 purchase, sell, furnish, or serve alcoholic liquors (liquor and
79 wine), nonintoxicating beer, or nonintoxicating craft beer;

80 (5) Shall provide adequate restroom facilities, whether
81 permanent or portable, to serve the stated members and
82 guests who will be attending the festival, fair, or other event;

83 (6) Shall provide a floorplan for the proposed premises
84 with a defined and bounded area to safely account for the
85 ingress and egress of stated members and guests who will
86 be attending the festival, fair, or other event; and

87 (7) Utilizes an age verification system approved by the
88 commissioner.

89 (g) "Private hotel" means an applicant for a private club
90 or licensed private club licensee meeting the criteria set
91 forth in this subsection which:

92 (1) Has at least 2,000 members;

93 (2) Offers short-term, daily rate accommodations or
94 lodging for members and their guests amounting to at least
95 30 separate bedrooms, and also offers a conference center
96 for meetings;

97 (3) Operates a restaurant and full kitchen with ovens,
98 four-burner ranges, walk-in freezers, and other kitchen
99 utensils and apparatus as determined by the commissioner
100 on the licensed premises and serves freshly prepared food at
101 least 20 hours per week;

102 (4) Maintains, at any one time, \$2,500 of fresh food
103 inventory capable of being prepared in the private hotel's
104 full kitchen, and in calculating the food inventory the
105 commissioner may not include microwavable, frozen, or
106 canned foods;

107 (5) Owns or leases, controls, operates, and uses acreage
108 amounting to more than one acre but fewer than three acres,

109 which are contiguous acres of bounded or fenced real
110 property which would be listed on the licensee's floorplan
111 and would be used for hotel and conferences and large
112 contracted for group-type events such as weddings,
113 reunions, conferences, meetings, and sporting or
114 recreational events;

115 (6) Lists in the application referenced in subdivision (5)
116 of this subsection the entire property and all adjoining
117 buildings and structures on the private hotel's floorplan
118 which would comprise the licensed premises, which would
119 be authorized for the lawful sales, service, and consumption
120 of alcoholic liquors throughout the licensed premises
121 whether these activities were conducted in a building or
122 structure or outdoors while on the private hotel's licensed
123 premises and as noted on the private hotel's floorplan;

124 (7) Has an identified person, persons, or entity that has
125 right, title, and ownership or lease interest in the real
126 property buildings and structures located on the proposed
127 licensed premises; and

128 (8) Utilizes an age verification system approved by the
129 commissioner.

130 (h) "Private resort hotel" means an applicant for a
131 private club or licensed private club licensee meeting the
132 criteria set forth in this subsection which:

133 (1) Has at least 5,000 members;

134 (2) Offers short-term, daily rate accommodations or
135 lodging for members and their guests amounting to at least
136 50 separate bedrooms;

137 (3) Operates a restaurant and full kitchen with ovens,
138 six-burner ranges, walk-in freezers, and other kitchen
139 utensils and apparatus as determined by the commissioner
140 on the licensed premises and serves freshly prepared food at
141 least 25 hours per week;

142 (4) Maintains, at any one time, \$5,000 of fresh food
143 inventory capable of being prepared in the private resort
144 hotel's full kitchen, and in calculating the food inventory the
145 commissioner may not include microwavable, frozen, or
146 canned foods;

147 (5) Owns or leases, controls, operates, and uses acreage
148 amounting to at least 10 contiguous acres of bounded or
149 fenced real property which would be listed on the licensee's
150 floorplan and would be used for destination, resort, and
151 large contracted for group-type events such as weddings,
152 reunions, conferences, meetings, and sporting or
153 recreational events;

154 (6) Lists the entire property from subdivision (5) of this
155 subsection and all adjoining buildings and structures on the
156 private resort hotel's floorplan which would comprise the
157 licensed premises, which would be authorized for the lawful
158 sales, service, and consumption of alcoholic liquors
159 throughout the licensed premises whether these activities
160 were conducted in a building or structure or outdoors while
161 on the private resort hotel's licensed premises and as noted
162 on the private resort hotel's floorplan;

163 (7) Has an identified person or persons or entity that has
164 right, title, and ownership or lease interest in the real
165 property buildings and structures located on the proposed
166 licensed premises;

167 (8) Utilizes an age verification system approved by the
168 commissioner; and

169 (9) May have a separately licensed resident brewer with
170 a brewpub license inner-connected via a walkway, doorway,
171 or entryway, all as determined and approved by the
172 commissioner, for limited access during permitted hours of
173 operation for tours and complimentary samples at the
174 resident brewery.

175 (i) “Private golf club” means an applicant for a private
176 club or licensed private club licensee meeting the criteria set
177 forth in this subsection which:

178 (1) Has at least 100 members;

179 (2) Maintains at least one 18-hole golf course with
180 separate and distinct golf playing holes, not reusing nine
181 golf playing holes to comprise the 18 golf playing holes, and
182 a clubhouse;

183 (3) Operates a restaurant and full kitchen with ovens, as
184 determined by the commissioner, on the licensed premises
185 and serves freshly prepared food at least 15 hours per week;

186 (4) Owns or leases, controls, operates, and uses acreage
187 amounting to at least 80 contiguous acres of bounded or
188 fenced real property which would be listed on the private
189 golf club’s floorplan and could be used for golfing events
190 and large contracted for group-type events such as
191 weddings, reunions, conferences, meetings, and sporting or
192 recreational events;

193 (5) Lists the entire property from subdivision (4) of this
194 subsection and all adjoining buildings and structures on the
195 private golf club’s floorplan which would comprise the
196 licensed premises, which would be authorized for the lawful
197 sales, service, and consumption of alcoholic liquors
198 throughout the licensed premises whether these activities
199 were conducted in a building or structure or outdoors while
200 on the private golf club’s licensed premises and as noted on
201 the private golf club’s floorplan;

202 (6) Has an identified person or persons or entity that has
203 right, title, and ownership interest in the real property
204 buildings and structures located on the proposed licensed
205 premises; and

206 (7) Utilizes an age verification system approved by the
207 commissioner.

208 (j) "Private nine-hole golf course" means an applicant
209 for a private club or licensed private club licensee meeting
210 the criteria set forth in this subsection which:

211 (1) Has at least 50 members;

212 (2) Maintains at least one nine-hole golf course with
213 separate and distinct golf playing holes;

214 (3) Operates a restaurant and full kitchen with ovens, as
215 determined by the commissioner, on the licensed premises
216 and serves freshly prepared food at least 15 hours per week;

217 (4) Owns or leases, controls, operates, and uses acreage
218 amounting to at least 30 contiguous acres of bounded or
219 fenced real property which would be listed on the private
220 nine-hole golf course's floorplan and could be used for
221 golfing events and large contracted for group-type events
222 such as weddings, reunions, conferences, meetings, and
223 sporting or recreational events;

224 (5) Lists the entire property from subdivision (4) of this
225 subsection and all adjoining buildings and structures on the
226 private nine-hole golf course's floorplan which would
227 comprise the licensed premises, which would be authorized
228 for the lawful sales, service, and consumption of alcoholic
229 liquors throughout the licensed premises whether these
230 activities were conducted in a building or structure or
231 outdoors while on the private nine-hole golf course's
232 licensed premises and as noted on the private nine-hole golf
233 course's floorplan;

234 (6) Has an identified person, persons, or entity that has
235 right, title, and ownership interest in the real property
236 buildings and structures located on the proposed licensed
237 premises; and

238 (7) Utilizes an age verification system approved by the
239 commissioner.

240 The Department of Natural Resources, the authority
241 governing any county or municipal park, or any county
242 commission, municipality, other governmental entity,
243 public corporation or public authority operating any park or
244 airport may lease as lessor a building or portion thereof or
245 other limited premises in any such park or airport to any
246 corporation or unincorporated association for the
247 establishment of a private club pursuant to this article.

§60-7-3. Sale of alcoholic liquors and nonintoxicating beer by licensee authorized.

1 Notwithstanding any other provisions of this code to the
2 contrary, licensees are hereby authorized to sell, tender, and
3 serve alcoholic liquors by the drink and as otherwise
4 authorized by the provisions of §60-1-1 *et seq.* of this code,
5 other than in sealed packages, for consumption on the
6 premises of the licensees, to their members and their guests
7 in accordance with the provisions of this article, rules of the
8 commissioner and as authorized under §60-6-8 of this code.
9 The licensees may keep and maintain on their premises a
10 supply of those lawfully acquired alcoholic liquors in such
11 quantities as may be appropriate for the conduct of
12 operations thereof.

§60-7-4. Application for license; information required; verification; application to be accompanied by fees; bond; college fraternities and sororities ineligible for license; racial discrimination by applicants prohibited.

1 (a) Application for a license to operate a private club
2 shall be made on such form as may be prescribed by the
3 commissioner and shall include:

4 (1) The name of the applicant;

5 (2) If the applicant is an unincorporated association, the
6 names and addresses of the members of its governing board;

7 (3) If the applicant is a corporation, the names and
8 addresses of its officers and directors;

9 (4) The place at which the applicant will conduct its
10 operations and whether the same is owned or leased by the
11 applicant;

12 (5) The number of members of the applicant;

13 (6) The name or names of any national organizations
14 with which applicant is affiliated and the nature of such
15 affiliation;

16 (7) The size and nature of the dining and kitchen
17 facilities operated by applicant;

18 (8) Accurate and complete ownership information;

19 (9) An attestation that the information in the application
20 is true and accurate; and

21 (10) Such other information as the commissioner may
22 reasonably require which shall include, but not be limited
23 to, the criminal records, if any, of each member of the
24 applicant's governing board and/or its officers and directors
25 who have been convicted of a felony or a crime involving
26 moral turpitude.

27 (b) The application shall be verified by each member of
28 the governing board of the applicant if an unincorporated
29 association or, if the applicant is a corporation, by each of
30 its officers and all members of its board of directors. The
31 application shall be accompanied by the license fee
32 hereinafter prescribed and by a bond of the applicant in the
33 penal sum of \$5,000 with a corporate surety authorized to
34 transact business in the state of West Virginia, payable to
35 the State of West Virginia, which bond shall be conditioned
36 on the payment of all fees herein prescribed and on the
37 faithful performance of and compliance with the provisions
38 of this article.

39 (c) Under no circumstance may any college fraternity or
40 sorority be issued a license to operate a private club.

41 (d) No license to operate a private club will be issued to
42 applicants who discriminate against any person or group of
43 persons because of race or color of such person or group of
44 persons.

§60-7-5. Investigation by commissioner; issuance or refusal of license; special requirements for clubs at parks and airports; form of license; license valid at one location only; expiration and renewal; transferability.

1 (a) Upon receipt of a completed application referred to
2 in §60-7-4 of this code, together with the accompanying fee
3 and bond, the commissioner shall conduct an investigation
4 to determine the accuracy of the matters contained in such
5 completed application and whether applicant is a bona fide
6 private club of good reputation in the community in which
7 it shall operate. For the purpose of conducting such
8 investigation, the commissioner may withhold the granting
9 or refusal to grant such license for a period not to exceed 30
10 days or until the applicant has completed the conditions set
11 forth in this article and in §60-7-4(a) of this code, all as
12 determined by the commissioner. If it shall appear that such
13 applicant is a bona fide private club of good reputation in
14 the community in which it shall operate and that there is no
15 false statement, no material misrepresentations, no hidden
16 ownership, or persons with an undisclosed pecuniary
17 interest, and no omissions or failures to disclose in such
18 application as determined by the commissioner, he or she
19 shall issue a license authorizing the applicant to sell
20 alcoholic liquors as provided in §60-7-3 of this code, and
21 otherwise shall refuse to issue such license, except that in
22 the case of an application by a corporation or association to
23 operate a private club in connection with:

24 (1) A state park, the Director of the Department of
25 Natural Resources must grant his or her approval before the
26 license can be issued; or

27 (2) A county or municipal park, or an airport, the
28 authority governing the park or airport must grant its
29 approval before the license can be issued.

30 A license may not be issued for a private club in any
31 state park unless a dining facility comparable to the dining
32 facility for the proposed private club will be available to
33 serve meals to the general public. A license may not be
34 issued for a private club in any county or municipal park, or
35 an airport, unless a dining facility comparable to the dining
36 facility for the proposed private club will be available to
37 serve meals to the general public.

38 (b) Upon refusal to issue such license the commissioner
39 shall make and enter an order denying such application,
40 which denial and refusal shall be final unless a hearing is
41 requested in accordance with the provisions of §60-7-13 of
42 this code. When such refusal or denial becomes final the
43 commissioner shall forthwith refund to the applicant his or
44 her fees and bond accompanying the application.

45 (c) Such license shall be of such form and design as the
46 commissioner may prescribe by reasonable rule or
47 regulation and shall authorize the licensee to sell alcoholic
48 liquors at only one location.

49 (d) Such license shall expire on June 30 next following
50 the date of issue and may be renewed upon the same
51 showing as required for the issuance of the initial license,
52 together with the payment of fees and filing of the bond as
53 required by this article.

54 (e) A license issued under the provisions of this article
55 may not be transferable.

§60-7-6. Annual license fee; partial fee; and reactivation fee.

1 (a) The annual license fee for a license issued under the
2 provisions of this article to a fraternal or veterans'
3 organization or a nonprofit social club shall be \$750.

4 (b) The annual license fee for a license issued under the
5 provisions of this article to a private club other than a private
6 club of the type specified in subsection (a) of this section
7 shall be \$1,000 if the private club has fewer than 1,000
8 members, \$2,000 if the private club is a private nine-hole
9 golf course as defined in §60-7-2 of this code; \$2,500 if the
10 private club has 1,000 or more members, \$4,000 if the
11 private club is a private hotel with three or fewer designated
12 areas or a private golf club as defined in §60-7-2 of this
13 code, and further, if the private club is a private resort hotel
14 as defined in §60-7-2 of this code, said private resort hotel
15 may designate areas within the licensed premises for the
16 lawful sale, service, and consumption of alcoholic liquors
17 as provided for by this article. The annual license fee for a
18 private resort hotel with five or fewer designated areas shall
19 be \$7,500, and the annual license fee for a private resort
20 hotel with at least six but no more than 10 designated areas
21 shall be \$12,500. The annual license fee for a private resort
22 hotel with at least 11 but no more than 15 designated areas
23 shall be \$17,500. The annual license fee for a private resort
24 hotel with no fewer than 15 nor more than 20 designated
25 areas shall be \$22,500: *Provided*, That a private resort hotel
26 having obtained the license and paid the \$22,500 annual
27 license fee may, upon application to and approval of the
28 commissioner, designate additional areas for a period not to
29 exceed seven days for an additional fee of \$150 per day, per
30 designated area.

31 (c) The fee for any such license issued following
32 January 1 of any year and to expire on June 30 of such year
33 shall be one half of the annual license fee prescribed by
34 subsections (a) and (b) of this section.

35 (d) A licensee that fails to complete a renewal
36 application and make payment of its annual license fee in
37 renewing its license on or before June 30 of any subsequent
38 year, after initial application, shall be charged an additional
39 \$150 reactivation fee. The fee payment may not be prorated
40 or refunded, and the reactivation fee must be paid prior to

41 the processing of any renewal application and payment of
42 the applicable full year annual license fee. A licensee who
43 continues to operate upon the expiration of its license is
44 subject to all fines, penalties, and sanctions available in §60-
45 7-13 and §60-7-13a of this code, all as determined by the
46 commissioner.

47 (e) All such fees shall be paid by the commissioner to
48 the State Treasurer and credited to the General Revenue
49 Fund of the state.

**§60-7-6a. Special privilege of Class A private club licensee to
operate separate but connected Class B license.**

1 A Class A private club licensee with 1,000 or more
2 members may, in the commissioner's discretion, operate
3 Class B licenses for the off-premises sale of nonintoxicating
4 beer and wine in a connected but separately operated area
5 of the Class A private club premises: *Provided*, That each
6 business is licensed separately and operates separate cash
7 registers and maintains separation barriers between the
8 different licensed operations. Failure of a licensee to license
9 two inner-connected businesses shall subject the licensee to
10 the penalties under this article.

**§60-7-8a. Special license for a private fair and festival;
licensee fee and application; license fee; license subject to
provisions of article; exception.**

1 (a) There is hereby created a special license designated
2 Class S2 private fair and festival license for the retail sale of
3 liquor, wine, nonintoxicating beer, and nonintoxicating craft
4 beer for on-premises consumption.

5 (b) To be eligible for the license authorized by
6 subsection (a) of this section, the private fair and festival or
7 other event shall:

8 (1) Be sponsored, endorsed, or approved by the
9 governing body or its designee of the county or municipality

10 in which the private fair and festival or other event is
11 located;

12 (2) Shall make application with the commission at least
13 15 days pursuant to the private fair, festival, or other event;

14 (3) Pay a nonrefundable nonprorated license fee of
15 \$750; and

16 (4) Be approved by the commissioner to operate the
17 private fair, festival, or other event. (c) A private fair and
18 festival license under this section shall be for a duration of
19 no more than 10 consecutive days and no more than six
20 licenses may be issued to the same person or entity in a
21 calendar year.

22 (d) Nonintoxicating beer and nonintoxicating craft beer
23 sold, furnished, tendered, or served pursuant to the license
24 created by this section must be purchased from the licensed
25 distributor that services the area in which the private fair and
26 festival is held or from a resident brewer acting in a limited
27 capacity as a distributor, all in accordance with §11-16-1 *et*
28 *seq.* of this code.

29 (e) Wine sold, furnished, tendered, or served pursuant
30 to the license created by this section shall be purchased from
31 a licensed distributor, winery, or farm winery in accordance
32 with §60-8-1 *et seq.* of this code.

33 (f) Liquor sold, furnished, tendered, or served pursuant
34 to the license created by this section shall be purchased from
35 a licensed retail liquor outlet in the market zone or
36 contiguous market zone where the private fair or festival is
37 occurring, all in accordance with §60-3A-1 *et seq.* of this
38 code.

39 (g) A licensee authorized by this section may utilize
40 bona fide employees or volunteers to sell, furnish, tender, or
41 serve the nonintoxicating beer, nonintoxicating craft beer,
42 wine, or liquor.

43 (h) Licensed representatives of a brewer, resident
44 brewer, beer distributor, wine distributor, wine supplier,
45 winery, farm winery, distillery, mini-distillery, and liquor
46 broker representatives may attend a private fair and festival
47 and discuss their respective products but shall not engage in
48 the selling, furnishing, tendering, or serving of any
49 nonintoxicating beer, nonintoxicating craft beer, wine, or
50 liquor.

51 (i) A license issued under this section and the licensee
52 are subject to all other provisions of this article and the rules
53 and orders of the commissioner: *Provided*, That the
54 commissioner may by rule or order allow certain waivers or
55 exceptions with respect to those provisions, rules, or orders
56 as the circumstances of each private fair and festival require,
57 including without limitation, the right to revoke or suspend
58 immediately any license issued under this section prior to
59 any notice or hearing, notwithstanding §60-7-13a of this
60 code: *Provided, however*, That under no circumstances may
61 the provisions of §60-7-12 of this code be waived or an
62 exception granted with respect thereto.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

1 (a) It is unlawful for any licensee, or agent, employee or
2 member thereof, on such licensee's premises to:

3 (1) Sell, offer for sale, tender, or serve any alcoholic
4 liquors other than by the drink poured from the original
5 package or container, except as authorized in §60-6-8 of this
6 code;

7 (2) Authorize or permit any disturbance of the peace,
8 obscene, lewd, immoral, or improper entertainment,
9 conduct, or practice, gambling or any slot machine, multiple
10 coin console machine, multiple coin console slot machine,
11 or device in the nature of a slot machine; however, various
12 games, gaming, and wagering conducted by duly licensed
13 persons of the West Virginia State Lottery Commission,
14 charitable bingo games conducted by duly licensed

15 charitable or public service organization (or its auxiliaries),
16 pursuant to §47-20-1 *et seq.* of this code, and charitable
17 raffle games conducted by a duly licensed charitable or
18 public service organization (or its auxiliaries), pursuant to
19 §47-21-1 *et seq.* of this code, all of which are permissible
20 on a licensee's licensed premises when operated in
21 accordance with this code, rules, and regulations: *Provided,*
22 That a private resort hotel holding a license issued pursuant
23 to §60-7-1 *et seq.* of this code, may sell, tender, or dispense
24 nonintoxicating beer, wine, or alcoholic liquors in or on the
25 premises licensed under §29-22A-1 *et seq.* and §29-22C-1
26 *et seq.*, or §29-25-1 *et seq.* of this code, during hours of
27 operation authorized by §29-22A-1 *et seq.* and §29-22C-1
28 *et seq.*, or §29-25-1 *et seq.* of this code;

29 (3) Sell, give away, or permit the sale of, gift to, or the
30 procurement of any nonintoxicating beer, wine, or alcoholic
31 liquors for or to, or permit the consumption of
32 nonintoxicating beer, wine, or alcoholic liquors on the
33 licensee's premises, by any person less than 21 years of age;

34 (4) Sell, give away, or permit the sale of, gift to, or the
35 procurement of any nonintoxicating beer, wine, or alcoholic
36 liquors, for or to any person known to be deemed legally
37 incompetent, or for or to any person who is physically
38 incapacitated due to consumption of nonintoxicating beer,
39 wine or alcoholic liquor or the use of drugs;

40 (5) Sell, give, or dispense nonintoxicating beer, wine, or
41 alcoholic liquors in or on any licensed premises, or in any
42 rooms directly connected therewith between the hours of
43 3:00 a.m. and 7:00 a.m. on weekdays or Saturdays, between
44 the hours of 3:00 a.m. and 10:00 a.m. on any Sunday or,
45 between the hours of 3:00 a.m. and 1:00 p.m. in any county
46 upon approval as provided for in §7-1-3ss of this code, on
47 any Sunday; and

48 (6) Permit the consumption by, or serve to, on the
49 licensed premises any nonintoxicating beer, wine, or

50 alcoholic liquors, covered by this article, to any person who
51 is less than 21 years of age;

52 (7) With the intent to defraud, alter, change, or
53 misrepresent the quality, quantity, or brand name of any
54 alcoholic liquor;

55 (8) Sell or offer for sale any alcoholic liquor to any
56 person who is not a duly elected or approved dues-paying
57 member in good standing of said private club or a guest of
58 such member;

59 (9) Sell, offer for sale, give away, facilitate the use of or
60 allow the use of carbon dioxide, cyclopropane, ethylene,
61 helium, or nitrous oxide for purposes of human
62 consumption except as authorized by the commissioner;

63 (10)(A) Employ any person who is less than 18 years of
64 age in a position where the primary responsibility for such
65 employment is to sell, furnish, tender, serve, or give
66 nonintoxicating beer, wine, or alcoholic liquors to any
67 person;

68 (B) Employ any person who is between the ages of 18
69 and 21 who is not directly supervised by a person aged 21
70 or over in a position where the primary responsibility for
71 such employment is to sell, furnish, tender, serve or give
72 nonintoxicating beer, wine, or alcoholic liquors to any
73 person; or

74 (11) Violate any reasonable rule of the commissioner.

75 (b) It is lawful for any licensee to advertise price and
76 brand in any news media or other means, outside of the
77 licensee's premises.

78 (c) Any person who violates any of the foregoing
79 provisions is guilty of a misdemeanor and, upon conviction
80 thereof, shall be fined not less than \$500 nor more than
81 \$1,000, or imprisoned in jail for a period not to exceed one
82 year, or both fined and imprisoned.

ARTICLE 8. SALE OF WINES.**§60-8-34. When retail sales prohibited.**

1 It shall be unlawful for a retailer, farm winery, wine
2 specialty shop retailer, private wine bed and breakfast,
3 private wine restaurant, or private wine spa licensee, his or
4 her servants, agents, or employees to sell or deliver wine
5 between the hours of 2:00 a.m. and 10:00 a.m. or, it shall be
6 unlawful for a winery, farm winery, private wine bed and
7 breakfast, private wine restaurant, or private wine spa, his
8 or her servants, agents, or employees to sell wine between
9 the hours of 2:00 a.m. and 1:00 p.m. in any county upon
10 approval as provided for in §7-1-3ss of this code, on
11 Sundays, or between the hours of 2:00 a.m. and 7:00 a.m.
12 on weekdays and Saturdays.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY,
AND DECENCY.****§61-8-27. Unlawful admission of children to dance house, etc.;
penalty.**

1 Any proprietor or any person in charge of a dance house,
2 concert saloon, theater, museum, or similar place of
3 amusement, or other place, where wines or spirituous or
4 malt liquors are sold or given away, or any place of
5 entertainment injurious to health or morals who admits or
6 permits to remain therein any minor under the age of 18
7 years, unless accompanied by his or her parent or guardian,
8 is guilty of a misdemeanor and, on conviction thereof, shall
9 be punished by a fine not exceeding \$200: *Provided*, That
10 there is exemption from this prohibition for: (a) A private
11 hotel, private nine-hole golf course, private resort hotel, and
12 private golf club licensed pursuant to §60-7-1 *et seq.* of this
13 code and in compliance with §60-7-2(g)(8), §60-7-2(h)(7),
14 §60-7-2(i)(7), and §60-7-2(j)(7) of this code; (b) a private
15 club with more than 1,000 members that is in good standing
16 with the Alcohol Beverage Control Commissioner, that has

17 been approved by the Alcohol Beverage Control
18 Commissioner and which has designated certain seating
19 areas on its licensed premises as nonalcoholic liquor and
20 nonintoxicating beer areas, as noted in the licensee's
21 floorplan; or (c) a private fair and festival that is in
22 compliance with §60-7-2(f)(7) of this code, by utilizing a
23 mandatory carding or identification program whereby all
24 members or guests being served or sold alcoholic liquors,
25 nonintoxicating beer, or nonintoxicating craft beer are asked
26 and must provide their proper identification to verify their
27 identity and further that they are of legal drinking age, 21
28 years of age or older, prior to each sale or service of
29 alcoholic liquors, nonintoxicating beer, or nonintoxicating
30 craft beer.

●

CHAPTER 18

**(Com. Sub. for H. B. 2481 - By Delegates Steele,
Foster, Kessinger, Pushkin, Barrett and Pyles)**

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

AN ACT to amend and reenact §60-3A-18 and §60-3A-25 of the Code of West Virginia, 1931, as amended, all relating to allowing retail liquor licensees to sell liquor on Sundays, other than Easter Sunday and those Sundays on which Christmas falls, beginning no earlier than 1 p.m.; and removing the criminal offense of selling liquor on Sundays.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-18. Days and hours retail licensees may sell liquor.

1 Retail licensees may not sell liquor on Easter Sunday,
2 Christmas day, or before 1 p.m. on other Sundays, except a
3 Sunday on which Christmas falls, or between the hours of
4 12:00 a.m. and 8:00 a.m., except that wine and fortified
5 wines may be sold on those days and at such times as
6 authorized in §60-8-34 of this code.

§60-3A-25. Certain acts of retail licensees prohibited; criminal penalties.

1 (a) It is unlawful for any retail licensee, or agent or
2 employee thereof, on such retail licensee's premises to:

3 (1) Sell or offer for sale any liquor other than from the
4 original package or container;

5 (2) Sell, give away, or permit the sale of, gift of, or the
6 procurement of, any liquor, for or to any person under 21
7 years of age;

8 (3) Sell, give away, or permit the sale of, gift of, or the
9 procurement of, any liquor, for or to any person visibly
10 intoxicated;

11 (4) Sell or offer for sale any liquor other than during the
12 hours permitted for the sale of liquor by retail licensees as
13 provided under this article;

14 (5) Permit the consumption by any person of any liquor;

15 (6) With the intent to defraud, alter, change, or
16 misrepresent the quality, quantity, or brand name of any
17 liquor;

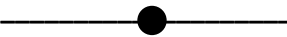
18 (7) Permit any person under 18 years of age to sell,
19 furnish, or give liquor to any other person;

20 (8) Purchase or otherwise obtain liquor in any manner
21 or from any source other than that specifically authorized in
22 this article; or

23 (9) Permit any person to break the seal on any package
24 or bottle of liquor.

25 (b) Any person who violates any provision of this
26 article, except section 24 of this article, including, but not
27 limited to, any provision of this section, or any rule
28 promulgated by the board or the commissioner, or who
29 makes any false statement concerning any material fact, or
30 who omits any material fact with intent to deceive, in
31 submitting an application for a retail license or for a renewal
32 of a retail license or in any hearing concerning the
33 suspension or revocation thereof, or who commits any of the
34 acts declared in this article to be unlawful, is guilty of a
35 misdemeanor and, shall, upon conviction thereof, for each
36 offense be fined not less than \$100 or more than \$5,000, or
37 imprisoned in the county jail for not less than 30 days nor
38 more than one year, or both fined and imprisoned.
39 Magistrates have concurrent jurisdiction with the circuit
40 courts for offenses under this article.

41 (c) Nothing in this article, or any rule of the board or
42 commissioner, prevents or prohibits any retail licensee from
43 employing any person who is at least 18 years of age to
44 serve in any retail licensee's lawful employment at any
45 retail outlet operated by such retail licensee, or from having
46 such person sell or deliver liquor under the provisions of this
47 article. With the prior approval of the commissioner, a retail
48 licensee may employ persons at any retail outlet operated by
49 such retail licensee who are less than 18 years of age but at
50 least 16 years of age, but such persons' duties shall not
51 include the sale or delivery of liquor: *Provided*, That the
52 authorization to employ such persons under the age of 18
53 years shall be clearly indicated on the retail license issued
54 to any such retail licensee.



CHAPTER 19

**(S. B. 354 - By Senators Blair, Boley, Maroney,
Roberts, Swope, Sypolt, Tarr, Facemire, Ihlenfeld,
Palumbo, Prezioso and Unger)**

[Passed February 8, 2019; in effect from passage.]
[Approved by the Governor on February 19, 2019.]

AN ACT expiring funds to the balance of the Auditor's Office – Chief Inspector's Fund, fund 1235, fiscal year 2019, organization 1200, in the amount of \$1,500,000, from the Auditor's Office – Securities Regulation Fund, fund 1225, fiscal year 2019, organization 1200, by supplementing and amending chapter 12, Acts of the Legislature, 2018, known as the Budget Bill.

Whereas, The Legislature finds that the account balance in the Auditor's Office – Securities Regulation Fund, fund 1225, fiscal year 2019, organization 1200 exceeds that which is necessary for the purpose for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending June 30, 2019, to the Auditor's Office – Securities Regulation Fund, fund 1225, fiscal year 2019, organization 1200, be decreased by expiring the amount of \$1,500,000 to the Auditor's Office – Chief Inspector's Fund, fund 1235, fiscal year 2019, organization 1200.

And, that the total appropriation for the fiscal year ending June 30, 2019, to fund 1235, fiscal year 2019, organization 1200, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

EXECUTIVE

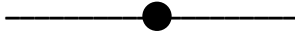
123– Auditor’s Office

Chief Inspector’s Fund

(WV Code Chapter 6)

Fund 1235 FY 2019 Org 1200

	Appropriation	Other Funds
1 Personal Services and		
2 Employee Benefits.....	00100	\$ 1,500,000



CHAPTER 20

(S. B. 424 - By Senators Carmichael (Mr. President) and Prezioso)

[By Request of the Executive]

[Passed March 9, 2019; in effect from passage.]
[Approved by the Governor on March 14, 2019.]

AN ACT supplementing and amending by adding a new item of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Governor’s Office, Civil Contingent Fund, fund 0105, fiscal year 2019, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which

included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for the fiscal year 2019; and

Whereas, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 0105, fiscal year 2019, organization 0100, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

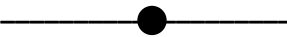
7 – Governor’s Office -

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2019 Org 0100

	Appropriation	General Revenue Fund
1 1a Civil Contingent Fund (R)	61400	\$ 10,000,000



CHAPTER 21

**(S. B. 435 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed March 9, 2019; in effect from passage.]
[Approved by the Governor on March 14, 2019.]

AN ACT supplementing and amending by increasing an existing item of appropriation and adding new item of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the State Board of Education, State Department of Education, fund 0313, fiscal year 2019, organization 0402, and to the State Board of Education, Vocational Division, fund 0390, fiscal year 2019, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for the fiscal year 2019; and

Whereas, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

43 – State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2019 Org 0402

		Appro- priation	General Revenue Fund
1	36 Communities in Schools (R)....	78103	\$ 3,000,000

Any unexpended balance remaining in the appropriation for Communities in Schools (fund 0313, appropriation 78103) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

And, That the total appropriation for the fiscal year ending June 30, 2019, to fund 0390, fiscal year 2019, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

46 – State Board of Education –

Vocational Division

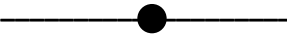
(WV Code Chapters 18 and 18A)

Fund 0390 FY 2019 Org 0402

1	7a Jim’s Dream (R)	14901	\$ 9,700,000
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From the above appropriation for Jim's Dream (fund 0390, appropriation 14901), funds are to be used for rehabilitation and workforce readiness transition programs.

Any unexpended balance remaining in the appropriation for Jim's Dream (fund 0390, appropriation 14901) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.



CHAPTER 22

**(S. B. 442 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed February 22, 2019; in effect from passage.]
[Approved by the Governor on March 7, 2019.]

AN ACT supplementing and amending by decreasing an existing appropriation and adding a new appropriation of federal funds out of the Treasury to the Department of Revenue – Insurance Commissioner, fund 8883, fiscal year 2019, organization 0704, by supplementing, amending, decreasing, and adding the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2019, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 8883, fiscal year 2019, organization 0704, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF REVENUE

357 – Insurance Commissioner

(WV Code Chapter 33)

Fund 8883 FY 2019 Org 0704

	Appropriation		Federal Funds
1 1 Current Expenses	13000	\$	10,000

And, That the total appropriation for the fiscal year ending June 30, 2019, to fund 8883, fiscal year 2019, organization 0704, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

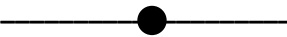
DEPARTMENT OF REVENUE

357 – Insurance Commissioner

(WV Code Chapter 33)

Fund 8883 FY 2019 Org 0704

	Appropriation		Federal Funds
1 2 Personal Services and			
2 Employee Benefits.....	00100	\$	10,000



CHAPTER 23

**(S. B. 443 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed February 22, 2019; in effect from passage.]
[Approved by the Governor on March 7, 2019.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2019, to the Department of Health and Human Resources, Division of Health – Community Mental Health Services, fund 8794, fiscal year 2019, organization 0506, to the Department of Health and Human Resources, Division of Human Services – Energy Assistance, fund 8755, fiscal year 2019, organization 0511, and to the Department of Health and Human Resources, Division of Human Services – Child Care and Development, fund 8817, fiscal year 2019, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2019, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 8794, fiscal year 2019, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

372 – Division of Health –

Community Mental Health Services

Fund 8794 FY 2019 Org 0506

	Appro- piation	Federal Funds
1 4 Current Expenses	13000	\$ 1,400,000

And, That the total appropriation for the fiscal year ending June 30, 2019, to fund 8755, fiscal year 2019, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

373 – Division of Human Services –

Energy Assistance

Fund 8755 FY 2019 Org 0511

	Appro- piation	Federal Funds
1 1 Personal Services and		
2 Employee Benefits.....	00100	\$ 200,000

And, That the total appropriation for the fiscal year ending June 30, 2019, to fund 8817, fiscal year 2019, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

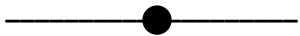
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

376 – Division of Human Services –

Child Care and Development

Fund 8817 FY 2019 Org 0511

	Appro- priation	Federal Funds
1 4 Current Expenses	13000	\$ 13,000,000



CHAPTER 24

**(S. B. 444 - By Senators Carmichael (Mr. President)
and Prezioso)**

[By Request of the Executive]

[Passed February 23, 2019; in effect from passage.]

[Approved by the Governor on March 7, 2019.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2019, to the Department of Health and Human Resources, Division of Health – Laboratory Services Fund, fund 5163, fiscal year 2019, organization 0506, and to the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2019, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources, Division of Health – Laboratory Services Fund, fund 5163, fiscal year 2019, organization 0506, and in the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2019, organization 0506, that is available for expenditure during the fiscal year ending June 30, 2019, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 5163, fiscal year 2019, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

203 – Division of Health –

Laboratory Services Fund

(WV Code Chapter 16)

Fund 5163 FY 2019 Org 0506

		Appro- priation	Other Funds
1	4	Current Expenses.....	13000 \$ 872,611

And, That the total appropriation for the fiscal year ending June 30, 2019, to fund 5214, fiscal year 2019, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

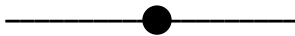
207 – Division of Health –

West Virginia Birth-to-Three Fund

(WV Code Chapter 16)

Fund 5214 FY 2019 Org 0506

		Appro- priation	Other Funds
1	4	Current Expenses.....	13000 \$ 1,138,304



CHAPTER 25

**(S. B. 452 - By Senators Carmichael (Mr. President)
and Prezioso)**

[By Request of the Executive]

[Passed February 21, 2019; in effect from passage.]

[Approved by the Governor on March 7, 2019.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2019, to the Department of Military Affairs and Public Safety, Division of Justice and Community Services – Second Chance Driver’s License Program Account, fund 6810, fiscal year 2019, organization 0620, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Military Affairs and Public Safety, Division of Justice and Community

Services – Second Chance Driver’s License Program Account, fund 6810, fiscal year 2019, organization 0620, that is available for expenditure during the fiscal year ending June 30, 2019, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 6810, fiscal year 2019, organization 0620, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

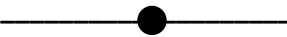
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

*237 – Division of Justice and Community Services –
Second Chance Driver’s License Program Account*

(WV Code Chapter 17B)

Fund 6810 FY 2019 Org 0620

		Appropriation		Other Funds
1	1	Current Expenses.....	13000	\$ 100,000



CHAPTER 26

(S. B. 677 - By Senators Blair, Boley, Hamilton, Maroney, Roberts, Swope, Sypolt, Takubo, Tarr, Facemire, Ihlenfeld, Palumbo, Prezioso, Stollings and Unger)

[Passed March 9, 2019; in effect from passage.]
[Approved by the Governor on March 14, 2019.]

AN ACT supplementing and amending by increasing existing items of appropriation and adding a new item of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health, Central Office, fund 0407, fiscal year 2019, organization 0506; and to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2019, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature a statement of the State Fund, General Revenue, dated January 9, 2019, setting forth therein the cash balance as of July 1, 2018; and further included the estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for fiscal year 2019; and

Whereas, The Governor submitted to the Legislature a statement of the State Fund, General Revenue and Executive Message dated March 6, 2019, which included a revised estimate of revenues for the fiscal year 2019; and

Whereas, It appears from the Governor's statement of the State Fund, General Revenue, and Executive Message, there now remains an unappropriated balance in the State Treasury which is

available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 0407, fiscal year 2019, organization 0506, be supplemented and amended by increasing an existing item of appropriation and adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

57 – Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2019 Org 0506

1	24	Health Right Free Clinics	72700	\$ 1,000,000
2	24a	Office of Medical Cannabis.....	#####	269,202

And, That the total appropriation for the fiscal year ending June 30, 2019, to fund 0403, fiscal year 2019, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

61 – Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2019 Org 0511

	Appropriation	General Revenue Fund
1 7 Social Services.....	19500	\$ 23,579,700



CHAPTER 27

(S. B. 678 - By Senators Blair, Boley, Hamilton, Maroney, Roberts, Swope, Sypolt, Takubo, Tarr, Facemire, Ihlenfeld, Palumbo, Prezioso, Stollings and Unger)

[Passed March 9, 2019; in effect from passage.]
 [Approved by the Governor on March 14, 2019.]

AN ACT making a supplementary appropriation by adding new items of appropriation from the balance of moneys remaining as an unappropriated balance in the State Fund, State Excess Lottery Revenue Fund, to the Department of Administration, Office of Technology, fund 2532, fiscal year 2019, organization 0231, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 9, 2019, which included a statement of the State Excess Lottery Revenue Fund setting forth therein the unappropriated cash balance as of July 1, 2018, and further included the estimate of revenues for the fiscal year 2019, less regular appropriations for fiscal year 2019; and

Whereas, It appears from the Governor’s statement of the State Excess Lottery Revenue Fund, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, be supplemented and amended by adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 5. Appropriations from state excess lottery revenue fund.

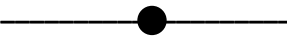
312a – Office of Technology

(WV Code Chapter 5A)

Fund 2532 FY 2019 Org 0231

		Excess Lottery Funds
	Appro- priation	
1 1 Cyber Security (R).....	XXXXXX	\$ 4,200,000
2 2 Enterprise Data Center (R)	XXXXXX	12,000,000
3 3 Enterprise Telephony		
4 Modernization (R)	XXXXXX	2,225,000

Any unexpended balance remaining in the appropriation for Cyber Security (fund 2532, appropriation XXXXX), Enterprise Data Center (fund 2532, appropriation XXXXX), and Enterprise Telephony Modernization (fund 2532, appropriation XXXXX) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.



CHAPTER 28

**(S. B. 679 - By Senators Blair, Boley, Hamilton,
Maroney, Roberts, Swope, Sypolt, Takubo, Tarr,
Facemire, Ihlenfeld, Palumbo, Prezioso, Stollings and
Unger)**

[Passed March 9, 2019; in effect from passage.]
[Approved by the Governor on March 14, 2019.]

AN ACT supplementing and amending by adding a new item of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Administration, Division of Finance, fund 0203, fiscal year 2019, organization 0209, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature a statement of the State Fund, General Revenue, dated January 9, 2019, setting forth therein the cash balance as of July 1, 2018; and further included the estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for fiscal year 2019; and

Whereas, The Governor submitted to the Legislature a statement of the State Fund, General Revenue and Executive Message dated March 6, 2019, which included a revised estimate of revenues for the fiscal year 2019; and

Whereas, It appears from the Governor's statement of the State Fund, General Revenue, and Executive Message, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 0203, fiscal year 2019, organization 0209, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

20 – Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2019 Org 0209

1	4a Enterprise Resource			
2	Planning System	08701	\$	298,000

The above appropriation for Enterprise Resource Planning System (fund 0203, appropriation 08701) shall be transferred to the Enterprise Resource Planning System Fund (fund 9080).



CHAPTER 29

**(S. B. 680 - By Senators Blair, Boley, Hamilton,
Maroney, Roberts, Swope, Sypolt, Takubo, Tarr,
Facemire, Ihlenfeld, Palumbo, Prezioso, Stollings and
Unger)**

[Passed March 9, 2019; in effect from passage.]
[Approved by the Governor on March 14, 2019.]

AN ACT supplementing and amending by increasing existing items of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of

Military Affairs and Public Safety, Division of Homeland Security and Emergency Management, fund 0443, fiscal year 2019, organization 0606; and to the Department of Military Affairs and Public Safety, Division of Corrections, Central Office, fund 0446, fiscal year 2019, organization 0608, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature a statement of the State Fund, General Revenue, dated January 9, 2019, setting forth therein the cash balance as of July 1, 2018; and further included the estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for fiscal year 2019; and

Whereas, The Governor submitted to the Legislature a statement of the State Fund, General Revenue and Executive Message dated March 6, 2019, which included a revised estimate of revenues for the fiscal year 2019; and

Whereas, It appears from the Governor's statement of the State Fund, General Revenue, and Executive Message, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 0443, fiscal year 2019, organization 0606, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

*66 – Division of Homeland Security and**Emergency Management*

(WV Code Chapter 15)

Fund 0443 FY 2019 Org 0606

1	8 SIRN	55401	\$	421,214
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And, That the total appropriation for the fiscal year ending June 30, 2019, to fund 0446, fiscal year 2019, organization 0608, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

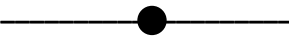
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

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

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

Fund 0446 FY 2019 Org 0608

1	Current Expenses	13000	\$	345,247
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CHAPTER 30

**(S. B. 681 - By Senators Blair, Boley, Hamilton,
Maroney, Roberts, Swope, Sypolt, Takubo, Tarr,
Facemire, Ihlenfeld, Palumbo, Prezioso, Stollings and
Unger)**

[Passed March 9, 2019; in effect from passage.]
[Approved by the Governor on March 14, 2019.]

AN ACT making a supplementary appropriation of Lottery Net Profits by adding a new item of appropriation from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Department of Education and the Arts, Educational Broadcasting Authority, fund 3587, fiscal year 2019, organization 0439, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 9, 2019, which included a statement of the Lottery Fund, setting forth therein the unappropriated cash balance as of July 1, 2018, and further included the estimate of revenues for the fiscal year 2019, less regular appropriations for fiscal year 2019; and

Whereas, It appears from the Governor's Statement of the Lottery Fund, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

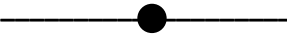
Sec. 4. Appropriations from lottery net profits.*295a – Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 3587 FY 2019 Org 0439

	Appropriation	Excess Lottery Funds
1 1 Capital Outlay and		
2 Maintenance (R)	75500	\$ 7,358,890

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 3587, appropriation 75500) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

**CHAPTER 31**

**(Com. Sub. for H. B. 2020 - By Hanshaw (Mr. Speaker) and Delegate Miley)
[By Request of the Executive]**

[Passed March 8, 2019; in effect from passage.]

[Approved by the Governor with deletions and reductions on March 14, 2019.]

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

Be it enacted by the Legislature of West Virginia:

Title

- I. General Provisions.**
- II. Appropriations.**
- III. Administration.**

TITLE I – GENERAL PROVISIONS.**TITLE I – GENERAL PROVISIONS.**

- §1. General Policy.
- §2. Definitions.
- §3. Classification of appropriations.
- §4. Method of expenditure.
- §5. Maximum expenditures.

1 **Section 1. General policy.** – The purpose of this bill is
2 to appropriate money necessary for the economical and
3 efficient discharge of the duties and responsibilities of the
4 state and its agencies during the fiscal year 2020.

1 **Sec. 2. Definitions.** — For the purpose of this bill:

2 “Governor” shall mean the Governor of the State of
3 West Virginia.

4 “Code” shall mean the Code of West Virginia, one
5 thousand nine hundred thirty-one, as amended.

6 “Spending unit” shall mean the department, bureau,
7 division, office, board, commission, agency or institution to
8 which an appropriation is made.

9 The “fiscal year 2020” shall mean the period from July
10 1, 2019, through June 30, 2020.

11 “General revenue fund” shall mean the general
12 operating fund of the state and includes all moneys received
13 or collected by the state except as provided in W.Va. Code
14 §12-2-2 or as otherwise provided.

15 “Special revenue funds” shall mean specific revenue
16 sources which by legislative enactments are not required to
17 be accounted for as general revenue, including federal
18 funds.

19 “From collections” shall mean that part of the total
20 appropriation which must be collected by the spending unit
21 to be available for expenditure. If the authorized amount of
22 collections is not collected, the total appropriation for the
23 spending unit shall be reduced automatically by the amount
24 of the deficiency in the collections. If the amount collected
25 exceeds the amount designated “from collections,” the
26 excess shall be set aside in a special surplus fund and may
27 be expended for the purpose of the spending unit as
28 provided by Article 2, Chapter 11B of the Code.

1 **Sec. 3. Classification of appropriations.** — An
2 appropriation for:

3 “Personal services” shall mean salaries, wages and other
4 compensation paid to full-time, part-time and temporary
5 employees of the spending unit but shall not include fees or
6 contractual payments paid to consultants or to independent
7 contractors engaged by the spending unit. “Personal
8 services” shall include “annual increment” for “eligible
9 employees” and shall be disbursed only in accordance with
10 Article 5, Chapter 5 of the Code.

11 Unless otherwise specified, appropriations for “personal
12 services” shall include salaries of heads of spending units.

13 “Employee benefits” shall mean social security
14 matching, workers’ compensation, unemployment
15 compensation, pension and retirement contributions, public
16 employees insurance matching, personnel fees or any other
17 benefit normally paid by the employer as a direct cost of
18 employment. Should the appropriation be insufficient to
19 cover such costs, the remainder of such cost shall be paid by
20 each spending unit from its “unclassified” appropriation, or
21 its “current expenses” appropriation or other appropriate
22 appropriation. Each spending unit is hereby authorized and
23 required to make such payments in accordance with the
24 provisions of Article 2, Chapter 11B of the Code.

25 Each spending unit shall be responsible for all
26 contributions, payments or other costs related to coverage
27 and claims of its employees for unemployment
28 compensation and workers compensation. Such
29 expenditures shall be considered an employee benefit.

30 “BRIM Premiums” shall mean the amount charged as
31 consideration for insurance protection and includes the
32 present value of projected losses and administrative
33 expenses. Premiums are assessed for coverages, as defined
34 in the applicable policies, for claims arising from, inter alia,
35 general liability, wrongful acts, property, professional
36 liability and automobile exposures.

37 Should the appropriation for “BRIM Premium” be
38 insufficient to cover such cost, the remainder of such costs
39 shall be paid by each spending unit from its “unclassified”
40 appropriation, its “current expenses” appropriation or any
41 other appropriate appropriation to the Board of Risk and
42 Insurance Management. Each spending unit is hereby
43 authorized and required to make such payments. If there is
44 no appropriation for “BRIM Premium” such costs shall be
45 paid by each spending unit from its “current expenses”
46 appropriation, “unclassified” appropriation or other
47 appropriate appropriation.

48 West Virginia Council for Community and Technical
49 College Education and Higher Education Policy
50 Commission entities operating with special revenue funds
51 and/or federal funds shall pay their proportionate share of
52 the Board of Risk and Insurance Management total
53 insurance premium cost for their respective institutions.

54 “Current expenses” shall mean operating costs other
55 than personal services and shall not include equipment,
56 repairs and alterations, buildings or lands. Each spending
57 unit shall be responsible for and charged monthly for all
58 postage meter service and shall reimburse the appropriate
59 revolving fund monthly for all such amounts. Such
60 expenditures shall be considered a current expense.

61 “Equipment” shall mean equipment items which have
62 an appreciable and calculable period of usefulness in excess
63 of one year.

64 “Repairs and alterations” shall mean routine
65 maintenance and repairs to structures and minor
66 improvements to property which do not increase the capital
67 assets.

68 “Buildings” shall include new construction and major
69 alteration of existing structures and the improvement of
70 lands and shall include shelter, support, storage, protection
71 or the improvement of a natural condition.

72 “Lands” shall mean the purchase of real property or
73 interest in real property.

74 “Capital outlay” shall mean and include buildings, lands
75 or buildings and lands, with such category or item of
76 appropriation to remain in effect as provided by W.Va.
77 Code §12-3-12.

78 From appropriations made to the spending units of state
79 government, upon approval of the Governor there may be
80 transferred to a special account an amount sufficient to
81 match federal funds under any federal act.

82 Appropriations classified in any of the above categories
83 shall be expended only for the purposes as defined above
84 and only for the spending units herein designated: *Provided*,
85 That the secretary of each department shall have the
86 authority to transfer within the department those general
87 revenue funds appropriated to the various agencies of the
88 department: *Provided, however*, That no more than five
89 percent of the general revenue funds appropriated to any one
90 agency or board may be transferred to other agencies or
91 boards within the department: and no funds may be
92 transferred to a “personal services and employee benefits”
93 appropriation unless the source funds are also wholly from
94 a “personal services and employee benefits” line, or unless

95 the source funds are from another appropriation that has
96 exclusively funded employment expenses for at least twelve
97 consecutive months prior to the time of transfer and the
98 position(s) supported by the transferred funds are also
99 permanently transferred to the receiving agency or board
100 within the department: *Provided further*, That the secretary
101 of each department and the director, commissioner,
102 executive secretary, superintendent, chairman or any other
103 agency head not governed by a departmental secretary as
104 established by Chapter 5F of the Code shall have the
105 authority to transfer funds appropriated to “personal
106 services and employee benefits,” “current expenses,”
107 “repairs and alterations,” “equipment,” “other assets,”
108 “land,” and “buildings” to other appropriations within the
109 same account and no funds from other appropriations shall
110 be transferred to the “personal services and employee
111 benefits” or the “unclassified” appropriation: And provided
112 further, That no authority exists hereunder to transfer funds
113 into appropriations to which no funds are legislatively
114 appropriated: And provided further, That if the Legislature
115 consolidates, reorganizes or terminates agencies, boards or
116 functions, the secretary or other appropriate agency head, or
117 in the case of the termination of a spending unit of the state,
118 the Director of the State Budget Office, in the absence of
119 general law providing otherwise, may transfer the funds
120 formerly appropriated to such agency, board or function,
121 allocating items of appropriation as may be necessary if
122 only part of the item may be allocated, in order to implement
123 such consolidation, reorganization or termination. No funds
124 may be transferred from a Special Revenue Account,
125 dedicated account, capital expenditure account or any other
126 account or fund specifically exempted by the Legislature
127 from transfer, except that the use of the appropriations from
128 the State Road Fund for the office of the Secretary of the
129 Department of Transportation is not a use other than the
130 purpose for which such funds were dedicated and is
131 permitted.

132 Appropriations otherwise classified shall be expended
 133 only where the distribution of expenditures for different
 134 purposes cannot well be determined in advance or it is
 135 necessary or desirable to permit the spending unit the
 136 freedom to spend an appropriation for more than one of the
 137 above classifications.

1 **Sec. 4. Method of expenditure.** — Money appropriated
 2 by this bill, unless otherwise specifically directed, shall be
 3 appropriated and expended according to the provisions of
 4 Article 3, Chapter 12 of the Code or according to any law
 5 detailing a procedure specifically limiting that article.

1 **Sec. 5. Maximum expenditures.** — No authority or
 2 requirement of law shall be interpreted as requiring or
 3 permitting an expenditure in excess of the appropriations set
 4 out in this bill.

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§18. Total appropriations.	
§19. General school fund.	

1 **Section 1. Appropriations from general revenue. –**
 2 From the State Fund, General Revenue, there are hereby
 3 appropriated conditionally upon the fulfillment of the provisions
 4 set forth in Article 2, Chapter 11B the following amounts, as
 5 itemized, for expenditure during the fiscal year 2020.

LEGISLATIVE

I-Senate

Fund 0165 FY 2020 Org 2100

	Appropriation	General Revenue Fund
1 Compensation of Members (R).....	00300	\$ 1,010,000
2 Compensation and Per Diem of		
3 Officers and Employees (R)	00500	4,011,332
4 Current Expenses and		
5 Contingent Fund (R).....	02100	276,392
6 Repairs and Alterations (R)	06400	50,000
7 Computer Supplies (R)	10100	20,000
8 Computer Systems (R).....	10200	60,000
9 Printing Blue Book (R).....	10300	125,000
10 Expenses of Members (R).....	39900	370,000
11 BRIM Premium (R)	91300	<u>29,482</u>
12 Total.....		\$ 5,952,206

13 The appropriations for the Senate for the fiscal year
 14 2019 are to remain in full force and effect and are hereby
 15 reappropriated to June 30, 2020. Any balances so
 16 reappropriated may be transferred and credited to the fiscal
 17 year 2019 accounts.

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

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

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

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

57 The distribution of the blue book shall be by the office
58 of the Clerk of the Senate and shall include 75 copies for
59 each member of the Legislature and two copies for each
60 classified and approved high school and junior high or
61 middle school and one copy for each elementary school
62 within the state.

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

*2-House of Delegates*Fund 0170 FY 2020 Org 2200

1	Compensation of Members (R).....	00300	\$ 3,000,000
2	Compensation and Per Diem		
3	of Officers and Employees (R)	00500	575,000
4	Current Expenses and		
5	Contingent Fund (R).....	02100	4,399,031
6	Expenses of Members (R).....	39900	1,350,000
7	BRIM Premium (R)	91300	<u>80,000</u>
8	Total.....		\$ 9,404,031

9 The appropriations for the House of Delegates for the
10 fiscal year 2019 are to remain in full force and effect and are
11 hereby reappropriated to June 30, 2020. Any balances so
12 reappropriated may be transferred and credited to the fiscal
13 year 2019 accounts.

14 Upon the written request of the Clerk of the House of
15 Delegates, the Auditor shall transfer amounts between items
16 of the total appropriation in order to protect or increase the
17 efficiency of the service.

18 The Clerk of the House of Delegates, with the approval
19 of the Speaker, is authorized to draw his or her requisitions
20 upon the Auditor, payable out of the Current Expenses and
21 Contingent Fund of the House of Delegates, for any bills for
22 supplies and services that may have been incurred by the
23 House of Delegates and not included in the appropriation
24 bill, for bills for services and supplies incurred in
25 preparation for the opening of the session and after
26 adjournment, and for the necessary operation of the House
27 of Delegates' offices, the requisitions for which are to be
28 accompanied by bills to be filed with the Auditor.

29 The Speaker of the House of Delegates shall have
30 authority to employ such staff personnel during and
31 between sessions of the Legislature as shall be needed, in
32 addition to personnel designated in the House resolution,

33 and the compensation of all personnel shall be as fixed in
 34 such House resolution for the session, or fixed by the
 35 Speaker during and between sessions of the Legislature,
 36 notwithstanding such House resolution. The Clerk of the
 37 House of Delegates is hereby authorized to draw
 38 requisitions upon the Auditor for such services, payable out
 39 of the appropriation for the Compensation and Per Diem of
 40 Officers and Employees or Current Expenses and
 41 Contingent Fund of the House of Delegates.

42 For duties imposed by law and by the House of
 43 Delegates, including salary allowed by law as keeper of the
 44 rolls, the Clerk of the House of Delegates shall be paid a
 45 monthly salary as provided in the House resolution, unless
 46 increased between sessions under the authority of the
 47 Speaker and payable out of the appropriation for
 48 Compensation and Per Diem of Officers and Employees or
 49 Current Expenses and Contingent Fund of the House of
 50 Delegates.

51 Included in the above appropriation for House of
 52 Delegates (fund 0170, appropriation 02100), an amount not
 53 less than \$5,000 is to be used for the West Virginia
 54 Academy of Family Physicians - Doc of the Day Program.

3-Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2020 Org 2300

1	Joint Committee on Government		
2	and Finance (R)	10400	\$ 6,725,138
3	Legislative Printing (R)	10500	260,000
4	Legislative Rule-Making		
5	Review Committee (R).....	10600	147,250
6	Legislative Computer System (R).....	10700	1,447,500
7	Legislative Fees & Dues (R).....	#####	600,000
8	BRIM Premium (R)	91300	<u>60,569</u>
9	Total.....		\$ 9,240,457

10 The appropriations for the Joint Expenses for the fiscal
 11 year 2019 are to remain in full force and effect and are
 12 hereby reappropriated to June 30, 2020. Any balances
 13 reappropriated may be transferred and credited to the fiscal
 14 year 2019 accounts.

15 Upon the written request of the Clerk of the Senate, with
 16 the approval of the President of the Senate, and the Clerk of
 17 the House of Delegates, with the approval of the Speaker of
 18 the House of Delegates, and a copy to the Legislative
 19 Auditor, the Auditor shall transfer amounts between items
 20 of the total appropriation in order to protect or increase the
 21 efficiency of the service.

JUDICIAL

4-Supreme Court –

General Judicial

Fund 0180 FY 2020 Org 2400

1	Personal Services and		
2	Employee Benefits (R)	00100	\$ 110,767,344
3	Intermediate Court of Appeals.....	09001	0
4	Military Service		
5	Members Court (R).....	#####	300,000
6	Current Expenses (R).....	13000	9,943,616
7	Repairs and Alterations (R)	06400	10,000
8	Equipment (R).....	07000	1,600,000
9	Judges’ Retirement System (R)	11000	791,000
10	Buildings (R).....	25800	20,000
11	Other Assets (R).....	69000	200,000
12	BRIM Premium (R)	91300	<u>690,384</u>
13	Total.....		\$ 124,322,344

14 The appropriations to the Supreme Court of Appeals for
 15 the fiscal years 2017, 2018 and 2019 are to remain in full
 16 force and effect and are hereby reappropriated to June 30,
 17 2020. Any balances so reappropriated may be transferred
 18 and credited to the fiscal year 2019 accounts.

19 This fund shall be administered by the Administrative
 20 Director of the Supreme Court of Appeals, who shall draw
 21 requisitions for warrants in payment in the form of payrolls,
 22 making deductions there from as required by law for taxes
 23 and other items.

24 The appropriation for the Judges' Retirement System
 25 (fund 0180, appropriation 11000) is to be transferred to the
 26 Consolidated Public Retirement Board, in accordance with
 27 the law relating thereto, upon requisition of the
 28 Administrative Director of the Supreme Court of Appeals.

EXECUTIVE

5-Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2020 Org 0100

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,250,758
3	Current Expenses (R).....	13000	800,000
4	Repairs and Alterations.....	06400	25,000
5	National Governors Association....	12300	60,700
6	Herbert Henderson		
7	Office of Minority Affairs	13400	146,726
8	BRIM Premium.....	91300	<u>183,645</u>
9	Total.....		\$ 4,466,829

10 Any unexpended balances remaining in the
 11 appropriations for Unclassified (fund 0101, appropriation
 12 09900), and Current Expenses (fund 0101, appropriation
 13 13000) at the close of the fiscal year 2019 are hereby
 14 reappropriated for expenditure during the fiscal year
 15 2020.

16 The above appropriation for Herbert Henderson Office
 17 of Minority Affairs (fund 0101, appropriation 13400) shall
 18 be transferred to the Minority Affairs Fund (fund 1058).

6-Governor’s Office –

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2020 Org 0100

1	Personal Services and			
2	Employee Benefits.....	00100	\$	381,293
3	Current Expenses (R).....	13000		183,158
4	Repairs and Alterations.....	06400		<u>5,000</u>
5	Total.....		\$	569,451

6 Any unexpended balance remaining in the
7 appropriation for Current Expenses (fund 0102,
8 appropriation 13000) at the close of the fiscal year 2019 is
9 hereby reappropriated for expenditure during the fiscal year
10 2020.

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

7-Governor’s Office –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2020 Org 0100

1 Any unexpended balances remaining in the
2 appropriations for Business and Economic Development
3 Stimulus – Surplus (fund 0105, appropriation 08400), Civil
4 Contingent Fund – Total (fund 0105, appropriation 11400),
5 2012 Natural Disasters – Surplus (fund 0105, appropriation
6 13500), Civil Contingent Fund – Total – Surplus (fund
7 0105, appropriation 23800), Civil Contingent Fund –
8 Surplus (fund 0105, appropriation 26300), Business and
9 Economic Development Stimulus (fund 0105,

10 appropriation 58600), Civil Contingent Fund (fund 0105,
 11 appropriation 61400), and Natural Disasters – Surplus (fund
 12 0105, appropriation 76400) at the close of the fiscal year
 13 2019 are hereby reappropriated for expenditure during the
 14 fiscal year.

15 From this fund there may be expended, at the discretion
 16 of the Governor, an amount not to exceed \$1,000 as West
 17 Virginia’s contribution to the interstate oil compact
 18 commission.

19 The above fund is intended to provide contingency
 20 funding for accidental, unanticipated, emergency or
 21 unplanned events which may occur during the fiscal year
 22 and is not to be expended for the normal day-to-day
 23 operations of the Governor’s Office.

8-Auditor’s Office –

General Administration

(WV Code Chapter 12)

Fund 0116 FY 2020 Org 1200

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,797,589
3	Current Expenses (R).....	13000	13,429
4	BRIM Premium.....	91300	<u>12,077</u>
5	Total.....		\$ 2,823,095

6 Any unexpended balance remaining in the
 7 appropriation for Current Expenses (fund 0116,
 8 appropriation 13000) at the close of the fiscal year 2019 is
 9 hereby reappropriated for expenditure during the fiscal year
 10 2020.

11 Included in the above appropriation to Personal
 12 Services and Employee Benefits (fund 0116, appropriation
 13 00100), is \$95,000 for the Salary of the Auditor.

9-Treasurer's Office

(WV Code Chapter 12)

Fund 0126 FY 2020 Org 1300

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,561,063
3	Unclassified	09900	30,415
4	Current Expenses (R).....	13000	782,911
5	Abandoned Property Program	11800	41,794
6	Other Assets.....	69000	10,000
7	ABLE Program	69201	150,000
8	BRIM Premium	91300	<u>59,169</u>
9	Total.....		\$ 3,635,352
10	Any unexpended balances remaining in the		
11	appropriation for Current Expenses (fund 0126,		
12	appropriation 13000) at the close of the fiscal year 2019 are		
13	hereby reappropriated for expenditure during the fiscal year		
14	2020.		

15 Included in the above appropriation to Personal
 16 Services and Employee Benefits (fund 0126, appropriation
 17 00100), is \$95,000 for the Salary of the Treasurer.

10-Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2020 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 6,346,674
3	Animal Identification Program	03900	131,942
4	State Farm Museum.....	05500	87,759
5	Current Expenses (R).....	13000	141,960
6	Gypsy Moth Program (R).....	11900	1,003,440
7	WV Farmers Market.....	12801	150,467
8	Black Fly Control.....	13700	453,698
9	Donated Foods Program	36300	45,000

10	Veterans to Agriculture		
11	Program (R)	36301	255,624
12	Predator Control (R)	47000	176,400
13	Bee Research.....	69100	70,634
14	Microbiology Program.....	78500	99,828
15	Moorefield Agriculture Center	78600	975,284
16	Chesapeake Bay Watershed.....	83000	112,427
17	Livestock Care Standards Board....	84300	8,820
18	BRIM Premium.....	91300	138,905
19	State FFA-FHA Camp and		
20	Conference Center	94101	638,554
21	Threat Preparedness.....	94200	73,122
22	WV Food Banks.....	96900	126,000
23	Senior's Farmers' Market		
24	Nutrition Coupon Program	97000	<u>55,835</u>
25	Total.....		\$ 11,092,373

26 Any unexpended balances remaining in the
27 appropriations for Gypsy Moth Program (fund 0131,
28 appropriation 11900), Current Expenses (fund 0131,
29 appropriation 13000), Veterans to Agriculture Program
30 (fund 0131, appropriation 36301), Predator Control (fund
31 0131, appropriation 47000), and Agricultural Disaster and
32 Mitigation Needs – Surplus (fund 0131, appropriation
33 85000) at the close of the fiscal year 2019 are hereby
34 reappropriated for expenditure during the fiscal year 2020.

35 Included in the above appropriation to Personal
36 Services and Employee Benefits (fund 0131, appropriation
37 00100), is \$95,000 for the Salary of the Commissioner.

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

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

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

11-West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2020 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 794,191
3	Unclassified	09900	77,059
4	Current Expenses (R).....	13000	317,848
5	Soil Conservation Projects (R)	12000	9,799,709
6	BRIM Premium.....	91300	<u>34,428</u>
7	Total.....		\$ 11,023,235

8 Any unexpended balances remaining in the
 9 appropriations for Soil Conservation Projects (fund 0132,
 10 appropriation 12000), and Current Expenses (fund 0132,
 11 appropriation 13000) at the close of the fiscal year 2019 are
 12 hereby reappropriated for expenditure during the fiscal year
 13 2020.

12-Department of Agriculture –

Meat Inspection Fund

(WV Code Chapter 19)

Fund 0135 FY 2020 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 668,030
3	Unclassified	09900	7,090
4	Current Expenses	13000	<u>82,605</u>
5	Total.....		\$ 757,725

6 Any part or all of this appropriation may be transferred
 7 to a special revenue fund for the purpose of matching
 8 federal funds for the above-named program.

13-Department of Agriculture –

Agricultural Awards Fund

(WV Code Chapter 19)

Fund 0136 FY 2020 Org 1400

1	Programs and Awards for			
2	4-H Clubs and FFA/FHA	57700	\$	15,000
3	Commissioner's Awards			
4	and Programs	73700		<u>39,250</u>
5	Total.....		\$	54,250

14-Department of Agriculture –

West Virginia Agricultural Land Protection Authority

(WV Code Chapter 8A)

Fund 0607 FY 2020 Org 1400

1	Personal Services and			
2	Employee Benefits.....	00100	\$	99,547
3	Unclassified	09900		<u>950</u>
4	Total.....		\$	100,497

15-Attorney General

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

Fund 0150 FY 2020 Org 1500

1	Personal Services and			
2	Employee Benefits (R)	00100	\$	2,818,788
3	Unclassified (R)	09900		24,428
4	Current Expenses (R).....	13000		762,097
5	Repairs and Alterations.....	06400		1,000

6	Equipment.....	07000	1,000
7	Criminal Convictions and		
8	Habeas Corpus Appeals (R)	26000	946,078
9	Better Government Bureau	74000	279,412
10	BRIM Premium.....	91300	<u>120,654</u>
11	Total.....		\$ 4,953,457

12 Any unexpended balances remaining in the above
13 appropriations for Personal Services and Employee Benefits
14 (fund 0150, appropriation 00100), Unclassified (fund 0150,
15 appropriation 09900), Current Expenses (fund 0150,
16 appropriation 13000), Criminal Convictions and Habeas
17 Corpus Appeals (fund 0150, appropriation 26000), and
18 Agency Client Revolving Liquidity Pool (fund 0150,
19 appropriation 36200) at the close of the fiscal year 2019 are
20 hereby reappropriated for expenditure during the fiscal year
21 2020, with the exception of fund 0150, fiscal year 2016,
22 appropriation 00100 (\$208,241.14), and fund 0150, fiscal
23 year 2017, appropriation 00100 (\$1,474,457.07) which
24 shall expire on June 30, 2019.

25 Included in the above appropriation to Personal
26 Services and Employee Benefits (fund 0150, appropriation
27 00100), is \$95,000 for the Salary of the Attorney General.

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

16-Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2020 Org 1600

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

7 Any unexpended balances remaining in the
8 appropriations for Unclassified (fund 0155, appropriation
9 09900) and Current Expenses (fund 0155, appropriation
10 13000) at the close of the fiscal year 2019 are hereby
11 reappropriated for expenditure during the fiscal year 2020.

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

17-State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2020 Org 1601

1	Personal Services and			
2	Employee Benefits.....	00100	\$	2,477
3	Unclassified	09900		75
4	Current Expenses	13000		<u>4,956</u>
5	Total.....		\$	7,508

DEPARTMENT OF ADMINISTRATION*18-Department of Administration –**Office of the Secretary*

(WV Code Chapter 5F)

Fund 0186 FY 2020 Org 0201

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 606,584
3	Unclassified	09900	9,177
4	Current Expenses		13000
5	85,009	
6	Repairs and Alterations.....	06400	100
7	Equipment.....	07000	1,000
8	Financial Advisor (R)	30400	27,546
9	Lease Rental Payments	51600	15,000,000
10	Design-Build Board	54000	4,000
11	Other Assets.....	69000	100
12	BRIM Premium.....	91300	<u>6,736</u>
13	Total.....		\$ 15,740,252

14 Any unexpended balance remaining in the
 15 appropriation for Financial Advisor (fund 0186,
 16 appropriation 30400) at the close of the fiscal year 2019 is
 17 hereby reappropriated for expenditure during the fiscal year
 18 2020.

19 The appropriation for Lease Rental Payments (fund
 20 0186, appropriation 51600) shall be disbursed as provided
 21 by W.Va. Code §31-15-6b.

19-Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2020 Org 0205

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

20-Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2020 Org 0209

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 64,696
3	Unclassified	09900	1,400
4	Current Expenses	13000	66,721
5	GAAP Project (R).....	12500	612,666
6	BRIM Premium.....	91300	<u>7,517</u>
7	Total.....		\$ 753,000

8 Any unexpended balance remaining in the
9 appropriation for GAAP Project (fund 0203, appropriation
10 12500) at the close of the fiscal year 2019 is hereby
11 reappropriated for expenditure during the fiscal year 2020.

21-Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2020 Org 0211

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,722,499
3	Unclassified	09900	20,000
4	Current Expenses	13000	728,849
5	Repairs and Alterations.....	06400	500
6	Equipment.....	07000	5,000
7	Fire Service Fee	12600	14,000
8	Buildings (R).....	25800	500
9	Preservation and Maintenance of		
10	Statues and Monuments		
11	on Capitol Grounds.....	37100	68,000
12	Capital Outlay,		
13	Repairs and Equipment (R)	58900	27,078,888
14	Other Assets	69000	500
15	Land (R).....	73000	500
16	BRIM Premium.....	91300	<u>129,983</u>

17 Total..... \$ 30,769,219

18 Any unexpended balances remaining in the above
19 appropriations for Buildings (fund 0230, appropriation
20 25800), Capital Outlay, Repairs and Equipment (fund 0230,
21 appropriation 58900), Capital Outlay, Repairs and
22 Equipment – Surplus (fund 0230, appropriation 67700), and
23 Land (fund 0230, appropriation 73000) at the close of the
24 fiscal year 2019 are hereby reappropriated for expenditure
25 during the fiscal year 2020.

26 From the above appropriation for Preservation and
27 Maintenance of Statues and Monuments on Capitol
28 Grounds (fund 0230, appropriation 37100), the Division
29 shall consult the Division of Culture and History and
30 Capitol Building Commission in all aspects of planning,
31 assessment, maintenance and restoration.

32 The above appropriation for Capital Outlay, Repairs
33 and Equipment (fund 0230, appropriation 58900) shall be
34 expended for capital improvements, maintenance, repairs
35 and equipment for state-owned buildings.

22-Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2020 Org 0213

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,055,926
3	Unclassified	09900	144
4	Current Expenses	13000	1,285
5	Repairs and Alterations.....	06400	200
6	BRIM Premium.....	91300	<u>6,922</u>
7	Total.....		\$ 1,064,477

8 The Division of Highways shall reimburse Fund 2031
9 within the Division of Purchasing for all actual expenses
10 incurred pursuant to the provisions of W.Va. Code §17-2A-
11 13.

23-Travel Management

(WV Code Chapter 5A)

Fund 0615 FY 2020 Org 0215

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 802,363
3	Unclassified	09900	12,032
4	Current Expenses	13000	440,247
5	Repairs and Alterations.....	06400	1,000
6	Equipment.....	07000	5,000
7	Buildings (R).....	25800	100
8	Other Assets.....	69000	<u>100</u>
9	Total.....		\$ 1,260,842
10	Any unexpended balance remaining in the		
11	appropriation for Buildings (fund 0615, appropriation		
12	25800) at the close of the fiscal year 2019 is hereby		
13	reappropriated for expenditure during the fiscal year 2020.		

24-Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2020 Org 0217

1	Current Expenses.....	13000	\$ 45,550
2	To pay expenses for members of the commission on		
3	uniform state laws.		

25-West Virginia Public Employees Grievance Board

(WV Code Chapter 6C)

Fund 0220 FY 2020 Org 0219

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 969,627
3	Unclassified	09900	1,000
4	Current Expenses	13000	143,754

5	Equipment.....	07000	50
6	BRIM Premium.....	91300	<u>10,281</u>
7	Total.....		\$ 1,124,712

26-Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2020 Org 0220

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 606,969
3	Unclassified	09900	2,200
4	Current Expenses	13000	104,501
5	Repairs and Alterations.....	06400	500
6	Other Assets.....	69000	100
7	BRIM Premium.....	91300	<u>5,574</u>
8	Total.....		\$ 719,844

27-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2020 Org 0221

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,711,081
3	Unclassified	09900	314,700
4	Current Expenses	13000	12,740
5	Public Defender Corporations	35200	19,538,435
6	Appointed Counsel Fees (R).....	78800	12,898,115
7	BRIM Premium.....	91300	<u>10,575</u>
8	Total.....		\$ 34,485,646

9 Any unexpended balance remaining in the above
10 appropriation for Appointed Counsel Fees (fund 0226,
11 appropriation 78800) at the close of the fiscal year 2019 is
12 hereby reappropriated for expenditure during the fiscal year
13 2020.

14 The director shall have the authority to transfer funds
 15 from the appropriation to Public Defender Corporations
 16 (fund 0226, appropriation 35200) to Appointed Counsel
 17 Fees (fund 0226, appropriation 78800).

28-Committee for the Purchase of

Commodities and Services from the Handicapped

(WV Code Chapter 5A)

Fund 0233 FY 2020 Org 0224

1	Personal Services and			
2	Employee Benefits.....	00100	\$	3,187
3	Current Expenses	13000		<u>868</u>
4	Total.....		\$	4,055

29-Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2020 Org 0225

1	PEIA Subsidy.....	80100	\$	21,000,000
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2 The Division of Highways, Division of Motor Vehicles,
 3 Public Service Commission and other departments,
 4 bureaus, divisions, or commissions operating from special
 5 revenue funds and/or federal funds shall pay their
 6 proportionate share of the public employees health
 7 insurance cost for their respective divisions.

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

30-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 0557 FY 2020 Org 0228

1	Forensic Medical		
2	Examinations (R).....	68300	\$ 141,579
3	Federal Funds/Grant Match (R).....	74900	<u>105,074</u>
4	Total.....		\$ 246,653
5	Any unexpended balances remaining in the		
6	appropriations for Forensic Medical Examinations (fund		
7	0557, appropriation 68300) and Federal Funds/Grant Match		
8	(fund 0557, appropriation 74900) at the close of the fiscal		
9	year 2019 are hereby reappropriated for expenditure during		
10	the fiscal year 2020.		

31-Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2020 Org 0233

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 681,101
3	Unclassified	09900	1,000
4	Current Expenses	13000	138,631
5	Repairs and Alterations.....	06400	100
6	Equipment.....	07000	2,500
7	BRIM Premium.....	91300	<u>8,534</u>
8	Total.....		\$ 831,866

DEPARTMENT OF COMMERCE*32-West Virginia Tourism Office*

(WV Code Chapter 5B)

Fund 0246 FY 2020 Org 0304

1	Tourism – Brand Promotion	61803	\$ 5,000,000
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2	Tourism – Public Relations.....	61804	750,000
3	Tourism – Events and		
4	Sponsorships.....	61805	250,000
5	Tourism – Industry Development..	61806	250,000
6	State Parks and		
7	Recreation Advertising.....	61900	<u>750,000</u>
8	Total.....		\$ 7,000,000

9 The Executive Director of the West Virginia Tourism
10 Office, with approval from the Secretary of Commerce,
11 shall have the authority to transfer between the above items
12 of appropriation.

33-Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2020 Org 0305

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,881,455
3	Unclassified	09900	21,435
4	Current Expenses	13000	338,953
5	Repairs and Alterations.....	06400	80,000
6	Equipment (R).....	07000	2,061
7	BRIM Premium.....	91300	<u>98,754</u>
8	Total.....	\$	3,422,658

9 Any unexpended balance remaining in the
10 appropriation for Equipment (fund 0250, appropriation
11 07000) at the close of the fiscal year 2019 is hereby
12 reappropriated for expenditure during the fiscal year 2020.

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

34-Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2020 Org 0306

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,678,448
3	Unclassified	09900	27,678
4	Current Expenses	13000	51,524
5	Repairs and Alterations.....	06400	968
6	Mineral Mapping System (R)	20700	1,134,143
7	BRIM Premium.....	91300	<u>24,486</u>
8	Total.....		\$ 2,917,247

9 Any unexpended balance remaining in the
 10 appropriation for Mineral Mapping System (fund 0253,
 11 appropriation 20700) at the close of the fiscal year 2019 is
 12 hereby reappropriated for expenditure during the fiscal year
 13 2020.

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

35-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2020 Org 0307

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 4,400,420
3	Unclassified	09900	108,055
4	Current Expenses	13000	3,765,277
5	National Youth Science Camp.....	13200	241,570
6	Local Economic Development		
7	Partnerships (R).....	13300	1,250,000
8	ARC Assessment	13600	152,585
9	Guaranteed Work Force		
10	Grant (R).....	24200	976,579
11	Mainstreet Program.....	79400	167,467
12	BRIM Premium.....	91300	3,157

13	Hatfield McCoy		
14	Recreational Trail	96000	<u>198,415</u>
15	Total.....		\$ 11,263,525

16 Any unexpended balances remaining in the
 17 appropriations for Sales and Marketing Enhancement –
 18 Surplus (fund 0256, appropriation 05099), Unclassified –
 19 Surplus (fund 0256, appropriation 09700), Partnership
 20 Grants (fund 0256, appropriation 13100), Local Economic
 21 Development Partnerships (fund 0256, appropriation
 22 13300), Guaranteed Work Force Grant (fund 0256,
 23 appropriation 24200), Industrial Park Assistance (fund
 24 0256, appropriation 48000), and Local Economic
 25 Development Assistance (fund 0256, appropriation 81900)
 26 at the close of the fiscal year 2019 are hereby reappropriated
 27 for expenditure during the fiscal year 2020.

28 The above appropriation to Local Economic
 29 Development Partnerships (fund 0256, appropriation
 30 13300) shall be used by the West Virginia Development
 31 Office for the award of funding assistance to county and
 32 regional economic development corporations or authorities
 33 participating in the Certified Development Community
 34 Program developed under the provisions of W.Va. Code
 35 §5B-2-14. The West Virginia Development Office shall
 36 award the funding assistance through a matching grant
 37 program, based upon a formula whereby funding assistance
 38 may not exceed \$34,000 per county served by an economic
 39 development or redevelopment corporation or authority.

36-Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2020 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,564,676
3	Current Expenses	13000	227,000
4	Repairs and Alterations.....	06400	28,000

5	Equipment.....	07000	15,000
6	BRIM Premium.....	91300	<u>8,500</u>
7	Total.....		\$ 1,843,176

37-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2020 Org 0310

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 16,956,925
3	Unclassified	09900	184,711
4	Current Expenses	13000	196,302
5	Repairs and Alterations.....	06400	100
6	Equipment.....	07000	100
7	Buildings.....	25800	100
8	Capital Outlay – Parks (R).....	28800	3,000,000
9	Litter Control		
10	Conservation Officers.....	56400	146,986
11	Upper Mud River Flood Control ...	65400	164,791
12	Other Assets.....	69000	100
13	Land (R).....	73000	100
14	Law Enforcement.....	80600	2,552,994
15	BRIM Premium.....	91300	<u>45,141</u>
16	Total.....		\$ 23,248,350

17 Any unexpended balances remaining in the
 18 appropriations for Buildings (fund 0265, appropriation
 19 25800), Capital Outlay – Parks (fund 0265, appropriation
 20 28800), Land (fund 0265, appropriation 73000), and State
 21 Park Improvements – Surplus (fund 0265, appropriation
 22 76300) at the close of the fiscal year 2019 are hereby
 23 reappropriated for expenditure during the fiscal year 2020.

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

38-Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2020 Org 0314

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 9,550,243
3	Unclassified	09900	111,016
4	Current Expenses	13000	1,396,141
5	Coal Dust and		
6	Rock Dust Sampling.....	27000	487,752
7	BRIM Premium.....	91300	<u>80,668</u>
8	Total.....		\$ 11,625,820

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

39-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2020 Org 0319

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 233,981
3	Unclassified	09900	3,480
4	Current Expenses	13000	<u>118,138</u>
5	Total.....		\$ 355,599

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

40-WorkForce West Virginia

(WV Code Chapter 23)

Fund 0572 FY 2020 Org 0323

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

41-Department of Commerce –

Office of the Secretary

(WV Code Chapter 19)

Fund 0606 FY 2020 Org 0327

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 588,872
3	Unclassified	09900	501,490
4	Current Expenses	13000	<u>17,099</u>
5	Total.....		\$ 1,107,461

6 From the above appropriation for Unclassified (fund
7 0606, appropriation 09900), \$500,000 shall be transferred
8 to the Broadband Enhancement Fund (fund 3013).

42-Office of Energy

(WV Code Chapter 5B)

Fund 0612 FY 2020 Org 0328

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 198,299
3	Unclassified	09900	12,395
4	Current Expenses	13000	1,029,679
5	BRIM Premium.....	91300	<u>3,894</u>
6	Total.....		\$ 1,244,267

7 From the above appropriation for Current Expenses
8 (fund 0612, appropriation 13000) \$558,247 is for West
9 Virginia University and \$308,247 is for Southern West
10 Virginia Community and Technical College for the Mine
11 Training and Energy Technologies Academy.

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

(WV Code Chapter 18)

Fund 0310 FY 2020 Org 0932

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 11,459,977
3	Independent Living Services	00900	429,418
4	Current Expenses	13000	558,815
5	Workshop Development	16300	1,817,427
6	Supported Employment		
7	Extended Services.....	20600	77,960
8	Ron Yost Personal		
9	Assistance Fund.....	40700	333,828
10	Employment Attendant		
11	Care Program.....	59800	131,575
12	BRIM Premium.....	91300	<u>77,464</u>
13	Total.....		\$ 14,886,464

14 From the above appropriation for Workshop
 15 Development (fund 0310, appropriation 16300), fund shall
 16 be used exclusively with the private nonprofit community
 17 rehabilitation program organizations known as work centers
 18 or sheltered workshops. The appropriation shall also be
 19 used to continue the support of the program, services, and
 20 individuals with disabilities currently in place at those
 21 organizations.

DEPARTMENT OF EDUCATION*44-State Board of Education –**School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2020 Org 0402

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 348,042
3	Current Expenses	13000	<u>2,118,865</u>
4	Total.....		\$ 2,466,907

45-State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2020 Org 0402

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 4,598,523
3	Teachers' Retirement		
4	Savings Realized	09500	*37,582,000
5	Unclassified (R).....	09900	420,000
6	Current Expenses (R).....	13000	2,572,000
7	Equipment.....	07000	5,000
8	Center for Professional		
9	Development (R).....	11500	150,000
10	Increased Enrollment.....	14000	3,060,000
11	Safe Schools.....	14300	4,781,026
12	National Teacher		
13	Certification (R).....	16100	300,000
14	Jim's Dream – Childhood		
15	Drug Prevention Education	21901	5,000,000
16	Buildings (R)	25800	1,000
17	Allowance for County Transfer	26400	476,348
18	Technology Repair		
19	and Modernization.....	29800	951,003
20	HVAC Technicians.....	35500	516,791
21	Early Retirement		
22	Notification Incentive.....	36600	300,000
23	MATH Program.....	36800	336,532
24	Assessment Programs	39600	1,339,588

*NOTE: The Governor reduced Item 45, line 3, by \$5,372,000, from \$42,954,000 to \$37,582,000. The total does not reflect the reductions made by the Governor.

25	Benedum Professional		
26	Development Collaborative	42700	429,775
27	Governor's Honors Academy	47800	1,059,270
28	21st Century Fellows	50700	274,899
29	English as a Second Language.....	52800	96,000
30	Teacher Reimbursement	57300	297,188
31	Hospitality Training.....	60000	272,775
32	Hi-Y Youth in Government	61600	100,000
33	High Acuity Special Needs (R)	63400	1,500,000
34	Foreign Student Education.....	63600	100,294
35	State Board of Education		
36	Administrative Costs	68400	277,403
37	Other Assets.....	69000	1,000
38	IT Academy (R).....	72100	500,000
39	Land (R).....	73000	1,000
40	Early Literacy Program.....	75600	5,705,624
41	School Based		
42	Truancy Prevention (R)	78101	2,032,238
43	Mastery Based Education	#####	125,000
44	Communities in Schools (R).....	78103	400,000
45	21st Century Learners (R).....	88600	1,756,470
46	BRIM Premium.....	91300	342,859
47	21st Century Assessment and		
48	Professional Development.....	93100	2,006,978
49	21st Century Technology		
50	Infrastructure Network		
51	Tools and Support.....	93300	7,636,586
52	Special Olympic Games.....	96600	25,000
53	Educational Program Allowance ...	99600	<u>516,250</u>
54	Total.....		<u>\$ 93,218,420</u>

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

57 Any unexpended balances remaining in the
58 appropriations for Unclassified (fund 0313, appropriation
59 09900), Current Expenses (fund 0313, appropriation
60 13000), Center for Professional Development (fund 0313,
61 appropriation 11500), National Teacher Certification (fund

62 0313, appropriation 16100), Buildings (fund 0313,
63 appropriation 25800), Benedum Professional Development
64 Collaborative (fund 0313, appropriation 42700),
65 Governor's Honors Academy (fund 0313, appropriation
66 47800), High Acuity Special Needs (fund 0313,
67 appropriation 63400), IT Academy (fund 0313,
68 appropriation 72100), Land (fund 0313, appropriation
69 73000), School Based Truancy Prevention (fund 0313,
70 appropriation 78101), Communities in Schools (fund 0313,
71 appropriation 78103), and 21st Century Learners (fund
72 0313, appropriation 88600) at the close of the fiscal year
73 2019 are hereby reappropriated for expenditure during the
74 fiscal year 2020.

75 The above appropriation for Teachers' Retirement
76 Savings Realized (fund 0313, appropriation 09500) shall be
77 transferred to the Employee Pension and Health Care
78 Benefit Fund (fund 2044).

79 From the above appropriation for Unclassified (fund
80 0313, appropriation 09900), \$120,000 shall be for assisting
81 low income students with AP exam fees.

82 The above appropriation for Hospitality Training (fund
83 0313, appropriation 60000), shall be allocated only to
84 entities that have a plan approved for funding by the
85 Department of Education, at the funding level determined
86 by the State Superintendent of Schools. Plans shall be
87 submitted to the State Superintendent of Schools to be
88 considered for funding.

89 From the above appropriation for Educational Program
90 Allowance (fund 0313, appropriation 99600), \$100,000
91 shall be expended for Webster County Board of Education
92 for Hacker Valley; \$150,000 shall be for the Randolph
93 County Board of Education for Pickens School; \$100,000
94 shall be for the Preston County Board of Education for the
95 Aurora School; \$100,000 shall be for the Fayette County
96 Board of Education for Meadow Bridge; and \$66,250 is for
97 Project Based Learning in STEM fields.

*46-State Board of Education –**Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2020 Org 0402

1	Special Education – Counties	15900	\$ 7,271,757
2	Special Education – Institutions.....	16000	3,968,631
3	Education of Juveniles		
4	Held in Predispositional		
5	Juvenile Detention Centers	30200	649,758
6	Education of Institutionalized		
7	Juveniles and Adults (R).....	47200	<u>20,474,233</u>
8	Total.....		\$ 32,364,379

9 Any unexpended balance remaining in the
 10 appropriation for Education of Institutionalized Juveniles
 11 and Adults (fund 0314, appropriation 47200) at the close of
 12 the fiscal year 2019 is hereby reappropriated for expenditure
 13 during the fiscal year 2020.

14 From the above appropriations, the superintendent shall
 15 have authority to expend funds for the costs of special
 16 education for those children residing in out-of-state
 17 placements.

*47-State Board of Education –**State Aid to Schools*

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2020 Org 0402

1	Other Current Expenses	02200	\$156,065,940
2	Advanced Placement.....	05300	644,087
3	Professional Educators.....	15100	901,230,362
4	Service Personnel.....	15200	304,858,302
5	Fixed Charges	15300	106,085,858
6	Transportation.....	15400	75,457,864

7	Professional Student		
8	Support Services.....	65500	40,513,635
9	Improved Instructional Programs ..	15600	51,527,411
10	21st Century Strategic Technology		
11	Learning Growth.....	93600	25,549,588
12	Teacher and Leader Induction	93601	<u>4,584,707</u>
13	Basic Foundation Allowances		1,666,517,754
14	Less Local Share		(478,449,993)
15	Adjustments		<u>(2,681,318)</u>
16	Total Basic State Aid		1,185,386,443
17	Public Employees'		
18	Insurance Matching	01200	223,979,027
19	Teachers' Retirement System	01900	65,201,000
20	School Building Authority.....	45300	24,000,000
21	Retirement Systems –		
22	Unfunded Liability	77500	<u>345,517,000</u>
23	Total.....		\$ 1,844,083,470

48-State Board of Education –

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2020 Org 0402

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,339,713
3	Unclassified	09900	268,800
4	Current Expenses	13000	883,106
5	Wood Products –		
6	Forestry Vocational Program...	14600	78,691
7	Albert Yanni		
8	Vocational Program.....	14700	132,123
9	Vocational Aid.....	14800	23,997,756
10	Adult Basic Education	14900	5,195,128
11	Jim's Dream.....	14901	6,000,000
12	Program Modernization	30500	884,313
13	High School Equivalency		
14	Diploma Testing (R).....	72600	803,397

15	FFA Grant Awards.....	83900	11,496
16	Pre-Engineering		
17	Academy Program	84000	<u>265,294</u>
18	Total.....		\$ 39,859,817

19 Any unexpended balance remaining in the
 20 appropriation for High School Equivalency Diploma
 21 Testing (fund 0390, appropriation 72600) at the close of the
 22 fiscal year 2019 is hereby reappropriated for expenditure
 23 during the fiscal year 2020.

49-State Board of Education –

West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2020 Org 0403

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 11,379,675
3	Unclassified	09900	110,000
4	Current Expenses	13000	2,240,696
5	Repairs and Alterations.....	06400	164,675
6	Equipment.....	07000	77,000
7	Buildings (R).....	25800	45,000
8	Capital Outlay and Maintenance (R)	75500	520,000
9	BRIM Premium.....	91300	<u>140,842</u>
10	Total.....		\$ 14,677,888

11 Any unexpended balances remaining in the appropriations
 12 for Buildings (fund 0320, appropriation 25800) and Capital
 13 Outlay and Maintenance (fund 0320, appropriation 75500) at
 14 the close of the fiscal year 2019 are hereby reappropriated for
 15 expenditure during the fiscal year 2020.

DEPARTMENT OF ARTS, CULTURE, AND HISTORY

50-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2020 Org 0432

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,463,493
3	Current Expenses	13000	610,843
4	Repairs and Alterations.....	06400	1,000
5	Equipment.....	07000	1
6	Unclassified (R).....	09900	28,483
7	WV Humanities Council.....	16800	250,000
8	Buildings (R).....	25800	1
9	Other Assets.....	69000	1
10	Educational Enhancements	69500	573,500
11	Land (R).....	73000	1
12	Culture and History Programming.....	73200	231,573
13	Capital Outlay and Maintenance (R)..	75500	19,600
14	Historical Highway		
15	Marker Program.....	84400	57,548
16	BRIM Premium.....	91300	<u>39,337</u>
17	Total.....		\$ 5,275,381

18 Any unexpended balances remaining in the
 19 appropriations for Unclassified (fund 0293, appropriation
 20 09900), Buildings (fund 0293, appropriation 25800),
 21 Capital Outlay, Repairs and Equipment (fund 0293,
 22 appropriation 58900), Capital Improvements – Surplus
 23 (fund 0293, appropriation 66100), Capital Outlay, Repairs
 24 and Equipment – Surplus (fund 0293, appropriation 67700),
 25 Land (fund 0293, appropriation 73000), and Capital Outlay
 26 and Maintenance (fund 0293, appropriation 75500) at the
 27 close of the fiscal year 2019 are hereby reappropriated for
 28 expenditure during the fiscal year 2020.

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

35 From the above appropriation for Educational
 36 Enhancements (fund 0293, appropriation 69500), \$500,000
 37 shall be used for Save the Children and \$73,500 shall be
 38 used for the Clay Center.

51-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2020 Org 0433

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,314,744
3	Current Expenses	13000	139,624
4	Repairs and Alterations.....	06400	6,500
5	Services to		
6	Blind & Handicapped	18100	161,717
7	BRIM Premium.....	91300	<u>18,205</u>
8	Total.....		\$ 1,640,790

52-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2020 Org 0439

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,840,433
3	Current Expenses	13000	1,591,805
4	Mountain Stage	24900	300,000
5	Capital Outlay		
6	and Maintenance (R)	75500	50,000
7	BRIM Premium.....	91300	<u>48,453</u>
8	Total.....		\$ 3,830,691

9 Any unexpended balance remaining in the
 10 appropriation for Capital Outlay and Maintenance (fund
 11 0300, appropriation 75500) at the close of the fiscal year
 12 2019 is hereby reappropriated for expenditure during the
 13 fiscal year 2020.

DEPARTMENT OF ENVIRONMENTAL PROTECTION*53-Environmental Quality Board*

(WV Code Chapter 20)

Fund 0270 FY 2020 Org 0311

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 82,539
3	Current Expenses	13000	28,453
4	Repairs and Alterations.....	06400	800
5	Equipment.....	07000	500
6	Other Assets.....	69000	400
7	BRIM Premium.....	91300	<u>791</u>
8	Total.....		\$ 113,483

54-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2020 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 4,196,400
3	Water Resources Protection		
4	and Management.....	06800	576,278
5	Current Expenses	13000	96,916
6	Repairs and Alterations.....	06400	1,500
7	Unclassified	09900	14,825
8	Dam Safety	60700	237,824
9	West Virginia Stream		
10	Partners Program	63700	77,396
11	Meth Lab Cleanup	65600	139,000
12	WV Contributions		
13	to River Commissions	77600	148,485
14	Office of Water Resources		
15	Non-Enforcement Activity	85500	<u>1,009,855</u>
16	Total.....		\$ 6,498,479

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

55-Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2020 Org 0325

1	Personal Services and			
2	Employee Benefits.....	00100	\$	60,737
3	Current Expenses	13000		11,612
4	Repairs and Alterations.....	06400		800
5	Equipment.....	07000		400
6	Other Assets.....	69000		200
7	BRIM Premium.....	91300		<u>2,304</u>
8	Total.....		\$	76,053

**DEPARTMENT OF HEALTH
AND HUMAN RESOURCES**

56-Department of Health and Human Resources –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2020 Org 0501

1	Personal Services and			
2	Employee Benefits.....	00100	\$	384,638
3	Unclassified	09900		6,459
4	Current Expenses	13000		50,613
5	Commission for the Deaf			
6	and Hard of Hearing	70400		<u>225,534</u>
7	Total.....		\$	667,244

8 Any unexpended balance remaining in the
 9 appropriation for the Women's Commission (fund 0400,
 10 appropriation 19100) at the close of the fiscal year 2019 is
 11 hereby reappropriated for expenditure during the fiscal year
 12 2020.

57-Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2020 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 12,946,328
3	Chief Medical Examiner.....	04500	9,666,347
4	Unclassified	09900	671,795
5	Current Expenses	13000	4,877,059
6	State Aid for Local and		
7	Basic Public Health Services... ..	18400	14,160,490
8	Safe Drinking Water Program (R) ...	18700	2,211,323
9	Women, Infants and Children.....	21000	38,621
10	Early Intervention	22300	8,134,060
11	Cancer Registry.....	22500	206,306
12	Office of Drug Control Policy (R) ...	35401	567,953
13	Statewide EMS		
14	Program Support (R)	38300	1,845,271
15	Office of Medical Cannabis.....	42001	2,380,489
16	Black Lung Clinics	46700	170,885
17	Vaccine for Children.....	55100	338,235
18	Tuberculosis Control.....	55300	379,256
19	Maternal and Child		
20	Health Clinics, Clinicians		
21	Medical Contracts and Fees (R)	57500	6,342,707
22	Epidemiology Support	62600	1,547,192
23	Primary Care Support	62800	4,263,706
24	Sexual Assault Intervention		
25	and Prevention	72300	125,000
26	Health Right Free Clinics	72700	3,750,000

27	Capital Outlay		
28	and Maintenance (R)	75500	100,000
29	Healthy Lifestyles	77800	1,000,000
30	Maternal Mortality Review.....	83400	49,933
31	Diabetes Education		
32	and Prevention	87300	97,125
33	BRIM Premium.....	91300	169,791
34	State Trauma and		
35	Emergency Care System.....	91800	2,021,322
36	WVU Charleston		
37	Poison Control Hotline	94400	<u>712,942</u>
38	Total.....		\$ 78,774,136

39 Any unexpended balances remaining in the
40 appropriations for Safe Drinking Water Program (fund
41 0407, appropriation 18700), Office of Drug Control Policy
42 (fund 0407, appropriation 35401), Office of Drug Control
43 Policy – Surplus (fund 0407, appropriation 35402),
44 Statewide EMS Program Support (fund 0407, appropriation
45 38300), Maternal and Child Health Clinics, Clinicians and
46 Medical Contracts and Fees (fund 0407, appropriation
47 57500), Capital Outlay and Maintenance (fund 0407,
48 appropriation 75500), Emergency Response Entities –
49 Special Projects (fund 0407, appropriation 82200), and
50 Tobacco Education Program (fund 0407, appropriation
51 90600) at the close of the fiscal year 2019 are hereby
52 reappropriated for expenditure during the fiscal year 2020.

53 From the above appropriation for Current Expenses
54 (fund 0407, appropriation 13000), an amount not less than
55 \$100,000 is for the West Virginia Cancer Coalition;
56 \$50,000 shall be expended for the West Virginia Aids
57 Coalition; \$100,000 is for Adolescent Immunization
58 Education; \$73,065 is for informal dispute resolution
59 relating to nursing home administrative appeals; \$50,000 is
60 for Hospital Hospitality House of Huntington; and \$200,000
61 is for Potomac Center Inc. of Romney, West Virginia.

62 From the above appropriation for Maternal and Child
63 Health Clinics, Clinicians and Medical Contracts and Fees

64 (fund 0407, appropriation 57500) up to \$400,000 may be
 65 transferred to the Breast and Cervical Cancer Diagnostic
 66 Treatment Fund (fund 5197) and \$11,000 is for the Marshall
 67 County Health Department for dental services.

58-Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2020 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,632,588
3	Current Expenses	13000	14,113
4	Behavioral Health Program (R)	21900	71,843,953
5	Jim's Dream.....	14901	9,000,000
6	Family Support Act.....	22100	251,226
7	Institutional Facilities		
8	Operations (R)	33500	137,929,180
9	Substance Abuse		
10	Continuum of Care (R).....	35400	5,000,000
11	Capital Outlay and		
12	Maintenance (R)	75500	950,000
13	Renaissance Program.....	80400	165,996
14	BRIM Premium.....	91300	<u>1,296,098</u>
15	Total.....		\$ 228,083,154

16 Any unexpended balances remaining in the
 17 appropriations for Behavioral Health Program (fund 0525,
 18 appropriation 21900), Institutional Facilities Operations
 19 (fund 0525, appropriation 33500), Substance Abuse
 20 Continuum of Care (fund 0525, appropriation 35400), and
 21 Capital Outlay and Maintenance (fund 0525, appropriation
 22 75500) at the close of the fiscal year 2019 are hereby
 23 reappropriated for expenditure during the fiscal year 2020.

24 Notwithstanding the provisions of Title I, section three
 25 of this bill, the secretary of the Department of Health and
 26 Human Resources shall have the authority to transfer funds
 27 within the above appropriations: *Provided*, That no more

28 than five percent of the funds appropriated to one
29 appropriation may be transferred to other appropriations:
30 *Provided, however,* That no funds from other appropriations
31 shall be transferred to the personal services and employee
32 benefits appropriation.

33 Included in the above appropriation for Behavioral
34 Health Program (fund 0525, appropriation 21900) is
35 \$100,000 for the Healing Place of Huntington.

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

41 From the above appropriation for Substance Abuse
42 Continuum of Care (fund 0525, appropriation 35400), the
43 funding will be consistent with the goal areas outlined in the
44 Comprehensive Substance Abuse Strategic Action Plan.

45 Additional funds have been appropriated in fund 5156,
46 fiscal year 2020, organization 0506, for the operation of the
47 institutional facilities. The secretary of the Department of
48 Health and Human Resources is authorized to utilize up to
49 ten percent of the funds from the Institutional Facilities
50 Operations appropriation to facilitate cost effective and cost
51 saving services at the community level.

59-Division of Health –

West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2020 Org 0506

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

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

60-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2020 Org 0510

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,073,553
3	Unclassified	09900	4,024
4	Current Expenses	13000	331,304
5	BRIM Premium.....	91300	<u>10,764</u>
6	Total.....		\$ 1,419,645

61-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2020 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	\$48,078,212
3	Unclassified	09900	5,688,944
4	Current Expenses	13000	11,404,008
5	Child Care Development	14400	4,102,718
6	Medical Services.....	18900	456,659,803
7	Social Services	19500	196,114,014
8	Family Preservation Program	19600	1,565,000
9	Family Resource Networks.....	27400	1,762,464
10	Domestic Violence		
11	Legal Services Fund	38400	400,000
12	James “Tiger” Morton Catastrophic		
13	Illness Fund.....	45500	105,695
14	I/DD Waiver	46600	88,753,483

15	Child Protective Services		
16	Case Workers.....	46800	24,917,075
17	OSCAR and RAPIDS	51500	6,493,207
18	TITLE XIX WAIVER FOR SENIORS ...	53300	13,593,620
19	WV Teaching Hospitals		
20	Tertiary/Safety Net	54700	6,356,000
21	Child Welfare System.....	60300	1,334,615
22	In-Home Family Education	68800	1,000,000
23	WV Works		
24	Separate State Program.....	69800	935,000
25	Child Support Enforcement	70500	6,758,806
26	Temporary Assistance for		
27	Needy Families/Maintenance		
28	of Effort	70700	25,819,096
29	Child Care – Maintenance		
30	of Effort Match	70800	5,693,743
31	Grants for Licensed Domestic Violence		
32	Programs and Statewide Prevention	75000	2,500,000
33	Capital Outlay		
34	And Maintenance (R)	75500	11,875
35	Community Based Services and		
36	Pilot Programs for Youth.....	75900	1,000,000
37	Medical Services		
38	Administrative Costs	78900	38,234,761
39	Traumatic Brain Injury Waiver.....	83500	800,000
40	Indigent Burials (R)	85100	2,050,000
41	BRIM Premium.....	91300	892,642
42	Rural Hospitals Under 150 Beds ...	94000	2,596,000
43	Children’s Trust Fund – Transfer ..	95100	<u>220,000</u>
44	Total.....		<u>\$955,840,781</u>

45 Any unexpended balances remaining in the
46 appropriations for Capital Outlay and Maintenance (fund
47 0403, appropriation 75500) and Indigent Burials (fund
48 0403, appropriation 85100) at the close of the fiscal year
49 2019 are hereby reappropriated for expenditure during the
50 fiscal year 2020.

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

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

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

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

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

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

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

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

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

**DEPARTMENT OF MILITARY AFFAIRS
 AND PUBLIC SAFETY**

62-Department of Military Affairs and Public Safety –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2020 Org 0601

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 672,826
3	Unclassified (R).....	09900	18,949
4	Current Expenses	13000	137,480
5	Repairs and Alterations.....	06400	1,500
6	Equipment.....	07000	1,500
7	Fusion Center (R).....	46900	553,678

8	Other Assets.....	69000	2,500
9	Directed Transfer.....	70000	32,000
10	BRIM Premium.....	91300	18,190
11	WV Fire and EMS		
12	Survivor Benefit (R).....	93900	200,000
13	Homeland State Security		
14	Administrative Agency (R)	95300	<u>315,220</u>
15	Total.....		\$ 1,953,843

16 Any unexpended balances remaining in the
 17 appropriations for Unclassified (fund 0430, appropriation
 18 09900), Fusion Center (fund 0430, appropriation 46900),
 19 Justice Reinvestment Training – Surplus (fund 0430,
 20 appropriation 69900), WV Fire and EMS Survivor Benefit
 21 (fund 0430, appropriation 93900), and Homeland State
 22 Security Administrative Agency (fund 0430, appropriation
 23 95300) at the close of the fiscal year 2019 are hereby
 24 reappropriated for expenditure during the fiscal year 2020.

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

63-Adjutant General –

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2020 Org 0603

1	Unclassified (R).....	09900	\$ 106,798
2	College Education Fund.....	23200	4,000,000
3	Civil Air Patrol.....	23400	249,664
4	Mountaineer ChalleNGe Academy....	70900	1,500,000
5	Armory Board Transfer	70015	2,317,555
6	Military Authority (R)	74800	6,260,251
7	Drug Enforcement and Support	74801	<u>1,500,000</u>
8	Total.....		\$ 15,934,268

9 Any unexpended balances remaining in the appropriations
 10 for Unclassified (fund 0433, appropriation 09900), Military
 11 Authority (fund 0433, appropriation 74800), and Military
 12 Authority – Surplus (fund 0433, appropriation 74899) at the
 13 close of the fiscal year 2019 is hereby reappropriated for
 14 expenditure during the fiscal year 2020.

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

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

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

64-Adjutant General –

Military Fund

(WV Code Chapter 15)

Fund 0605 FY 2020 Org 0603

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

65-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2020 Org 0605

1	Personal Services and			
2	Employee Benefits.....	00100	\$	405,066

3	Current Expenses	13000	355,234
4	Unclassified	09900	10,000
5	Salaries of Members of		
6	West Virginia Parole Board.....	22700	609,833
7	BRIM Premium.....	91300	<u>6,149</u>
8	Total.....		\$ 1,386,282

9 The above appropriation for Salaries of Members of
10 West Virginia Parole Board (fund 0440, appropriation
11 22700) includes funding for salary, annual increment (as
12 provided for in W.Va. Code §5-5-1), and related employee
13 benefits of board members.

66-Division of Homeland Security and

Emergency Management

(WV Code Chapter 15)

Fund 0443 FY 2020 Org 0606

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,572,931
3	Unclassified	09900	25,022
4	Current Expenses	13000	57,314
5	Repairs and Alterations.....	06400	600
6	Radiological Emergency		
7	Preparedness	55400	17,052
8	SIRN.....	55401	600,000
9	Federal Funds/Grant Match (R).....	74900	1,009,145
10	Mine and Industrial Accident Rapid		
11	Response Call Center.....	78100	469,911
12	Early Warning Flood System (R) ..	87700	484,448
13	BRIM Premium.....	91300	<u>96,529</u>
14	Total.....		\$ 4,332,952

15 Any unexpended balances remaining in the
16 appropriations for Federal Funds/Grant Match (fund 0443,
17 appropriation 74900), Early Warning Flood System (fund
18 0443, appropriation 87700), and Disaster Mitigation (fund
19 0443, appropriation 95200) at the close of the fiscal year

20 2019 are hereby reappropriated for expenditure during the
21 fiscal year 2020.

67-Division of Corrections and Rehabilitation –

Central Office

(WV Code Chapter 15A)

Fund 0446 FY 2020 Org 0608

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 559,966
3	Current Expenses	13000	<u>2,400</u>
4	Total.....		\$ 562,366

68-Division of Corrections and Rehabilitation –

Correctional Units

(WV Code Chapter 15A)

Fund 0450 FY 2020 Org 0608

1	Employee Benefits.....	01000	\$ 1,258,136
2	Children's Protection Act (R).....	09000	838,437
3	Unclassified	09900	1,578,800
4	Current Expenses (R).....	13000	52,016,936
5	Facilities Planning		
6	and Administration (R).....	38600	1,274,200
7	Charleston Correctional Center	45600	3,281,752
8	Beckley Correctional Center.....	49000	2,228,700
9	Anthony Correctional Center.....	50400	5,909,312
10	Huttonsville Correctional Center...	51400	22,397,941
11	Northern Correctional Center	53400	7,769,520
12	Inmate Medical Expenses (R).....	53500	21,226,064
13	Pruntytown Correctional Center	54300	8,303,659
14	Corrections Academy	56900	1,776,147
15	Information Technology Services....	59901	2,259,052
16	Martinsburg Correctional Center ...	66300	4,201,864

17	Parole Services.....	68600	5,641,740
18	Special Services	68700	6,230,985
19	Investigative Services	71600	3,301,523
20	Capital Outlay		
21	and Maintenance (R)	75500	7,000,000
22	Salem Correctional Center.....	77400	11,108,923
23	McDowell County		
24	Correctional Center.....	79000	2,542,590
25	Stevens Correctional Center	79100	7,863,195
26	Parkersburg Correctional Center....	82800	3,742,751
27	St. Mary's Correctional Center	88100	14,006,323
28	Denmar Correctional Center	88200	5,039,544
29	Ohio County Correctional Center..	88300	2,003,675
30	Mt. Olive Correctional Complex ...	88800	21,709,603
31	Lakin Correctional Center	89600	10,346,422
32	BRIM Premium.....	91300	<u>2,527,657</u>
33	Total.....		\$239,385,451

34 Any unexpended balances remaining in the
35 appropriations for Children's Protection Act (fund 0450,
36 appropriation 09000), Unclassified – Surplus (fund 0450,
37 appropriation 09700), Current Expenses (fund 0450,
38 appropriation 13000), Facilities Planning and
39 Administration (fund 0450, appropriation 38600), Inmate
40 Medical Expenses (fund 0450, appropriation 53500),
41 Capital Improvements – Surplus (fund 0450, appropriation
42 66100), Capital Outlay, Repairs and Equipment – Surplus
43 (fund 0450, appropriation 67700), Capital Outlay and
44 Maintenance (fund 0450, appropriation 75500), Security
45 System Improvements – Surplus (fund 0450, appropriation
46 75501), and Roof Repairs and Mechanical System
47 Upgrades (fund 0450, appropriation 75502) at the close of
48 the fiscal year 2019 are hereby reappropriated for
49 expenditure during the fiscal year 2020.

50 The Commissioner of Corrections and Rehabilitation
51 shall have the authority to transfer between appropriations
52 to the individual correctional units above and may transfer
53 funds from the individual correctional units to Current

54 Expenses (fund 0450, appropriation 13000) or Inmate
55 Medical Expenses (fund 0450, appropriation 53500).

56 From the above appropriation to Current Expenses
57 (fund 0450, appropriation 13000) payment shall be made to
58 house Division of Corrections and Rehabilitation inmates in
59 federal, county, and /or regional jails.

60 Any realized savings from Energy Savings Contract
61 may be transferred to Facilities Planning and
62 Administration (fund 0450, appropriation 38600).

69-Division of Corrections and Rehabilitation –

Bureau of Juvenile Services

(WV Code Chapter 15A)

Fund 0570 FY 2020 Org 0608

1	Statewide Reporting Centers	26200	\$ 7,233,094
2	Robert L. Shell Juvenile Center.....	26700	2,417,029
3	Resident Medical Expenses (R).....	53501	3,604,999
4	Central Office	70100	2,086,638
5	Capital Outlay		
6	and Maintenance (R)	75500	250,000
7	Gene Spadaro Juvenile Center.....	79300	2,595,691
8	BRIM Premium.....	91300	115,967
9	Kenneth Honey Rubenstein		
10	Juvenile Center (R).....	98000	5,654,445
11	Vicki Douglas Juvenile Center	98100	2,292,201
12	Northern Regional		
13	Juvenile Center	98200	2,876,302
14	Lorrie Yeager Jr. Juvenile Center ..	98300	2,330,333
15	Sam Perdue Juvenile Center	98400	2,455,085
16	Tiger Morton Center	98500	2,545,259
17	Donald R. Kuhn Juvenile Center ...	98600	4,877,936
18	J.M. "Chick" Buckbee		
19	Juvenile Center	98700	<u>2,439,816</u>
20	Total.....		\$ 43,774,795

21 Any unexpended balances remaining in the
 22 appropriations for Resident Medical Expenses (fund 0570,
 23 appropriation 53501), Capital Outlay and Maintenance
 24 (fund 0570, appropriation 75500), Roof Repairs and
 25 Mechanical System Upgrades (fund 0570, appropriation
 26 75502), and Kenneth Honey Rubenstein Juvenile Center
 27 (fund 0570, appropriation 98000) at the close of the fiscal
 28 year 2019 are hereby reappropriated for expenditure during
 29 the fiscal year 2020.

30 The Director of Juvenile Services shall have the
 31 authority to transfer between appropriations to the
 32 individual juvenile centers above including statewide
 33 reporting centers and central office and may transfer funds
 34 from the individual juvenile centers to Resident Medical
 35 Expenses (fund 0570, appropriation 53501).

70-West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2020 Org 0612

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 62,755,235
3	Children's Protection Act	09000	1,009,529
4	Current Expenses	13000	10,384,394
5	Repairs and Alterations.....	06400	450,523
6	Trooper Class (R).....	52100	3,207,832
7	Barracks Lease Payments	55600	237,898
8	Communications and		
9	Other Equipment (R)	55800	570,968
10	Trooper Retirement Fund.....	60500	7,004,590
11	Handgun Administration Expense ...	74700	77,892
12	Capital Outlay		
13	and Maintenance (R)	75500	250,000
14	Retirement Systems –		
15	Unfunded Liability	77500	13,187,000
16	Automated Fingerprint		
17	Identification System.....	89800	2,211,693

18	BRIM Premium.....	91300	<u>5,743,921</u>
19	Total.....		\$107,091,475

20 Any unexpended balances remaining in the
 21 appropriations for Trooper Class (fund 0453, appropriation
 22 52100), Communications and Other Equipment (fund 0453,
 23 appropriation 55800), and Capital Outlay and Maintenance
 24 (fund 0453, appropriation 75500) at the close of the fiscal
 25 year 2019 are hereby reappropriated for expenditure during
 26 the fiscal year 2020.

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

71-Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2020 Org 0619

1	Current Expenses	13000	\$	64,021
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72-Division of Justice and Community Services

(WV Code Chapter 15)

Fund 0546 FY 2020 Org 0620

1	Personal Services and			
2	Employee Benefits.....	00100	\$	570,979
3	Current Expenses	13000		133,360
4	Repairs and Alterations.....	06400		1,804
5	Child Advocacy Centers (R).....	45800		2,206,954
6	Community Corrections (R)	56100		6,927,323
7	Statistical Analysis Program.....	59700		49,819
8	Sexual Assault Forensic			
9	Examination Commission (R)...	71400		77,525

10	Qualitative Analysis and Training		
11	for Youth Services (R).....	76200	332,446
12	Law Enforcement		
13	Professional Standards.....	83800	164,272
14	BRIM Premium.....	91300	<u>2,123</u>
15	Total.....		\$ 10,466,605

16 Any unexpended balances remaining in the
 17 appropriations for Child Advocacy Centers (fund 0546,
 18 appropriation 45800), Community Corrections (fund 0546,
 19 appropriation 56100), Sexual Assault Forensic Examination
 20 Commission (fund 0546 appropriation 71400), Qualitative
 21 Analysis and Training for Youth Services (fund 0546,
 22 appropriation 76200), and Law Enforcement Professional
 23 Standards – Surplus (fund 0546, appropriation 83899) at the
 24 close of the fiscal year 2019 are hereby reappropriated for
 25 expenditure during the fiscal year 2020.

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

73-Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2020 Org 0622

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,029,459
3	Unclassified (R).....	09900	21,991
4	Current Expenses.....	13000	443,357
5	Repairs and Alterations.....	06400	8,500
6	Equipment (R).....	07000	64,171
7	BRIM Premium.....	91300	<u>12,226</u>
8	Total.....		\$ 3,579,704

9 Any unexpended balances remaining in the
 10 appropriations for Equipment (fund 0585, appropriation
 11 07000), and Unclassified (fund 0585, appropriation

12 09900) at the close of the fiscal year 2019 are hereby
 13 reappropriated for expenditure during the fiscal year
 14 2020.

74-Division of Administrative Services

(WV Code Chapter 15A)

Fund 0619 FY 2020 Org 0623

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,306,255
3	Current Expenses	13000	<u>30,000</u>
4	Total.....		\$ 2,336,255

DEPARTMENT OF REVENUE

75-Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2020 Org 0701

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 516,906
3	Unclassified*	09900	5,837
4	Current Expenses	13000	81,594
5	Repairs and Alterations.....	06400	1,262
6	Equipment.....	07000	8,000
7	Other Assets.....	69000	<u>500</u>
8	Total.....		\$ 614,099

9 Any unexpended balance remaining in the
 10 appropriation for Unclassified – Total (fund 0465,
 11 appropriation*) at the close of the fiscal year 2019 is
 12 hereby reappropriated for expenditure during the fiscal
 13 year 2020.

*NOTE: The Governor deleted the “(R)” in Item 75, line 3, following the word Unclassified, and “09900” in line 11, following the word appropriation.

76-Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2020 Org 0702

1	Personal Services and		
2	Employee Benefits (R)	00100	\$ 19,272,541
3	Unclassified (R)	09900	224,578
4	Current Expenses (R).....	13000	5,888,635
5	Repairs and Alterations.....	06400	10,150
6	Equipment.....	07000	154,850
7	Tax Technology Upgrade	09400	3,700,000
8	Multi State Tax Commission	65300	77,958
9	Other Assets	69000	10,000
10	BRIM Premium.....	91300	<u>15,579</u>
11	Total.....		\$ 29,354,291

12 Any unexpended balances remaining in the
 13 appropriations for Personal Services and Employee Benefits
 14 (fund 0470, appropriation 00100), Unclassified (fund 0470,
 15 appropriation 09900), Current Expenses (fund 0470,
 16 appropriation 13000), and Integrated Tax Assessment
 17 System (fund 0470, appropriation 29200) at the close of the
 18 fiscal year 2019 are hereby reappropriated for expenditure
 19 during the fiscal year 2020.

77-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2020 Org 0703

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 694,942
3	Unclassified (R)	09900	<u>1,199</u>
4	Total.....		\$ 696,141

5 Any unexpended balance remaining in the
 6 appropriation for Unclassified (fund 0595, appropriation

7 09900) at the close of the fiscal year 2019 is hereby
8 reappropriated for expenditure during the fiscal year 2020.

78-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2020 Org 0709

1	Personal Services and			
2	Employee Benefits.....	00100	\$	452,106
3	Current Expenses (R).....	13000		93,022
4	Unclassified	09900		5,255
5	BRIM Premium.....	91300		<u>3,062</u>
6	Total.....		\$	553,445

7 Any unexpended balance remaining in the
8 appropriation for Current Expenses (fund 0593,
9 appropriation 13000) at the close of the fiscal year 2019 is
10 hereby reappropriated for expenditure during the fiscal year
11 2020.

79-Division of Professional and Occupational Licenses –

State Athletic Commission

(WV Code Chapter 29)

Fund 0523 FY 2020 Org 0933

1	Personal Services and			
2	Employee Benefits.....	00100	\$	7,200
3	Current Expenses	13000		<u>29,611</u>
4	Total.....		\$	36,811

DEPARTMENT OF TRANSPORTATION

80-State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2020 Org 0804

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 328,369
3	Current Expenses	13000	287,707
4	Other Assets (R).....	69000	1,303,277
5	BRIM Premium.....	91300	<u>201,541</u>
6	Total.....		\$ 2,120,894

7 Any unexpended balance remaining in the
8 appropriation Other Assets (fund 0506, appropriation
9 69000) at the close of the fiscal year 2019 is hereby
10 reappropriated for expenditure during the fiscal year 2020.

81-Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2020 Org 0805

1	Equipment (R).....	07000	\$ 89,710
2	Current Expenses (R).....	13000	<u>2,173,279</u>
3	Total.....		\$ 2,262,989

4 Any unexpended balances remaining in the
5 appropriations for Equipment (fund 0510, appropriation
6 07000), Current Expenses (fund 0510, appropriation
7 13000), Buildings (fund 0510, appropriation 25800), and
8 Other Assets (fund 0510, appropriation 69000) at the close
9 of the fiscal year 2019 are hereby reappropriated for
10 expenditure during the fiscal year 2020.

82-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2020 Org 0807

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 178,740
3	Current Expenses (R).....	13000	591,839
4	Repairs and Alterations.....	06400	100
5	BRIM Premium.....	91300	<u>4,438</u>
6	Total.....		\$ 775,117

7 Any unexpended balances remaining in the
 8 appropriations for Unclassified (fund 0582, appropriation
 9 09900) and Current Expenses (fund 0582, appropriation
 10 13000) at the close of the fiscal year 2019 are hereby
 11 reappropriated for expenditure during the fiscal year
 12 2020.

DEPARTMENT OF VETERANS' ASSISTANCE

83-Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 0456 FY 2020 Org 0613

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,987,212
3	Unclassified	09900	20,000
4	Current Expenses	13000	427,767
5	Repairs and Alterations.....	06400	5,000
6	Veterans' Field Offices.....	22800	292,206
7	Veterans' Nursing Home (R).....	28600	6,801,772
8	Veterans' Toll Free		
9	Assistance Line.....	32800	2,015
10	Veterans' Reeducation		
11	Assistance (R).....	32900	29,502
12	Veterans' Grant Program (R).....	34200	560,000
13	Veterans' Grave Markers.....	47300	10,254
14	Veterans' Outreach Programs.....	61700	175,190
15	Memorial Day Patriotic Exercise...	69700	20,000
16	Veterans' Cemetery	80800	391,646
17	BRIM Premium.....	91300	<u>25,530</u>
18	Total.....		\$ 10,748,094

19 Any unexpended balances remaining in the
 20 appropriations for Veterans' Nursing Home (fund 0456,
 21 appropriation 28600), Veterans' Reeducation Assistance
 22 (fund 0456, appropriation 32900), Veterans' Grant Program
 23 (fund 0456, appropriation 34200), Veterans' Bonus –

24 Surplus (fund 0456, appropriation 34400), and Educational
 25 Opportunities for Children of Deceased Veterans (fund
 26 0456, appropriation 85400) at the close of the fiscal year
 27 2019 are hereby reappropriated for expenditure during the
 28 fiscal year 2020.

84-Department of Veterans' Assistance –

Veterans' Home

(WV Code Chapter 9A)

Fund 0460 FY 2020 Org 0618

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,217,096
3	Current Expenses	13000	<u>46,759</u>
4	Total.....		\$ 1,263,855

BUREAU OF SENIOR SERVICES

85-Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2020 Org 0508

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

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

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

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

86-West Virginia Council for

Community and Technical College Education –

Control Account

(WV Code Chapter 18B)

Fund 0596 FY 2020 Org 0420

1	West Virginia Council for Community		
2	and Technical Education (R)...	39200	\$ 738,955
3	Transit Training Partnership	78300	34,293
4	Community College		
5	Workforce Development (R)...	87800	2,786,925
6	College Transition Program.....	88700	278,222
7	West Virginia Advance		
8	Workforce Development (R)...	89300	3,118,960
9	Technical Program		
10	Development (R)	89400	1,800,735
11	WV Invests Grant Program.....	#####	<u>10,034,748</u>
12	Total.....		<u>\$18,792,838</u>

13 Any unexpended balances remaining in the
 14 appropriations for West Virginia Council for Community
 15 and Technical Education (fund 0596, appropriation 39200),
 16 Capital Improvements – Surplus (fund 0596, appropriation
 17 66100), Community College Workforce Development
 18 (fund 0596, appropriation 87800), West Virginia Advance
 19 Workforce Development (fund 0596, appropriation 89300),
 20 and Technical Program Development (fund 0596,
 21 appropriation 89400) at the close of the fiscal year 2019 are
 22 hereby reappropriated for expenditure during the fiscal year
 23 2020.

24 From the above appropriation for the Community
 25 College Workforce Development (fund 0596, appropriation

26 87800), \$200,000 shall be expended on the Mine Training
27 Program in Southern West Virginia.

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

87-Mountwest Community and Technical College

(WV Code Chapter 18B)

Fund 0599 FY 2020 Org 0444

1 Mountwest Community
2 and Technical College 48700 \$ 6,489,307

88-New River Community and Technical College

(WV Code Chapter 18B)

Fund 0600 FY 2020 Org 0445

1 New River Community
2 and Technical College 35800 \$ 5,864,886

89-Pierpont Community and Technical College

(WV Code Chapter 18B)

Fund 0597 FY 2020 Org 0446

1 Pierpont Community
2 and Technical College 93000 \$ 7,820,129

90-Blue Ridge Community and Technical College

(WV Code Chapter 18B)

Fund 0601 FY 2020 Org 0447

1 Blue Ridge Community
2 and Technical College 88500 \$ 7,830,842

91-West Virginia University at Parkersburg

(WV Code Chapter 18B)

Fund 0351 FY 2020 Org 0464

1	West Virginia University –		
2	Parkersburg.....	47100	\$ 10,319,284

92-Southern West Virginia Community

and Technical College

(WV Code Chapter 18B)

Fund 0380 FY 2020 Org 0487

1	Southern West Virginia Community		
2	and Technical College	44600	\$ 8,241,823

93-West Virginia Northern Community

and Technical College

(WV Code Chapter 18B)

Fund 0383 FY 2020 Org 0489

1	West Virginia Northern Community		
2	and Technical College	44700	\$ 7,285,825

94-Eastern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0587 FY 2020 Org 0492

1	Eastern West Virginia Community		
2	and Technical College	41200	\$ 2,179,912

95-BridgeValley Community and Technical College

(WV Code Chapter 18B)

Fund 0618 FY 2020 Org 0493

1	BridgeValley Community		
2	and Technical College	71700	\$ 8,098,811

HIGHER EDUCATION POLICY COMMISSION*96-Higher Education Policy Commission –**Administration –**Control Account*

(WV Code Chapter 18B)

Fund 0589 FY 2020 Org 0441

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,708,695
3	Current Expenses	13000	1,113,606
4	Higher Education Grant Program ..	16400	40,619,864
5	Tuition Contract Program (R).....	16500	1,225,120
6	Underwood-Smith Scholarship		
7	Program-Student Awards	16700	328,349
8	Facilities Planning		
9	and Administration	38600	1,760,254
10	Higher Education		
11	System Initiatives	48801	1,630,000
12	PROMISE Scholarship – Transfer.	80000	18,500,000
13	HEAPS Grant Program (R).....	86700	5,014,728
14	Health Professionals'		
15	Student Loan Program	#####	182,000
16	BRIM Premium.....	91300	<u>17,817</u>
17	Total.....		\$ 73,100,433

18 Any unexpended balances remaining in the
 19 appropriations for Unclassified – Surplus (fund 0589,
 20 appropriation 09700), Tuition Contract Program (fund
 21 0589, appropriation 16500), Capital Improvements –
 22 Surplus (fund 0589, appropriation 66100), Capital Outlay
 23 and Maintenance (fund 0589, appropriation 75500), and

24 HEAPS Grant Program (fund 0589, appropriation 86700) at
25 the close of the fiscal year 2019 are hereby reappropriated
26 for expenditure during the fiscal year 2020.

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

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

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

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

97-Higher Education Policy Commission –

Administration -

West Virginia Network for Educational Telecomputing (WVNET)

(WV Code Chapter 18B)

Fund 0551 FY 2020 Org 0495

1 WVNET..... 16900 \$ 1,747,826

98-West Virginia University –

School of Medicine

Medical School Fund

(WV Code Chapter 18B)

Fund 0343 FY 2020 Org 0463

1	WVU School of Health Science –		
2	Eastern Division	05600	\$ 2,235,352
3	WVU – School of Health Sciences	17400	15,056,370
4	WVU – School of Health Sciences –		
5	Charleston Division	17500	2,286,711
6	Rural Health Outreach Programs ...	37700	164,517
7	West Virginia University		
8	School of Medicine		
9	BRIM Subsidy	46000	<u>1,203,087</u>
10	Total.....		\$ 20,946,037

11 The above appropriation for Rural Health Outreach
 12 Programs (fund 0343, appropriation 37700) includes rural
 13 health activities and programs; rural residency development
 14 and education; and rural outreach activities.

15 The above appropriation for West Virginia University
 16 School of Medicine BRIM Subsidy (fund 0343,
 17 appropriation 46000) shall be paid to the Board of Risk and
 18 Insurance Management as a general revenue subsidy against
 19 the “Total Premium Billed” to the institution as part of the
 20 full cost of their malpractice insurance coverage.

*99-West Virginia University –**General Administrative Fund*

(WV Code Chapter 18B)

Fund 0344 FY 2020 Org 0463

1	West Virginia University	45900	\$ 97,017,960
2	Jackson’s Mill	46100	491,458
3	West Virginia University		
4	Institute of Technology.....	47900	8,020,938
5	State Priorities – Brownfield		

6	Professional Development.....	53100	316,556
7	Energy Express	86100	382,935
8	West Virginia University –		
9	Potomac State	99400	<u>4,512,711</u>
10	Total.....		\$110,742,558

11 From the above appropriation for Jackson’s Mill (fund
 12 0344, appropriation 46100) \$250,000 shall be used for the
 13 West Virginia State Fire Training Academy.

100-Marshall University –

School of Medicine

(WV Code Chapter 18B)

Fund 0347 FY 2020 Org 0471

1	Marshall Medical School	17300	\$ 12,235,068
2	Rural Health		
3	Outreach Programs (R).....	37700	156,022
4	Forensic Lab	37701	227,415
5	Center for Rural Health.....	37702	157,096
6	Marshall University Medical School		
7	BRIM Subsidy	44900	<u>872,612</u>
8	Total.....		\$ 13,648,213

9 Any unexpended balance remaining in the
 10 appropriation for Rural Health Outreach Program (fund
 11 0347, appropriation 37700) at the close of the fiscal year
 12 2019 is hereby reappropriated for expenditure during the
 13 fiscal year 2020.

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

18 The above appropriation for Marshall University
 19 Medical School BRIM Subsidy (fund 0347, appropriation
 20 44900) shall be paid to the Board of Risk and Insurance

21 Management as a general revenue subsidy against the
22 “Total Premium Billed” to the institution as part of the full
23 cost of their malpractice insurance coverage.

101-Marshall University –

General Administration Fund

(WV Code Chapter 18B)

Fund 0348 FY 2020 Org 0471

1	Marshall University	44800	\$ 46,761,199
2	Luke Lee Listening		
3	Language and Learning Lab	44801	99,015
4	Vista E-Learning (R)	51900	229,019
5	State Priorities – Brownfield		
6	Professional Development (R).	53100	309,606
7	Marshall University Graduate College		
8	Writing Project (R)	80700	25,412
9	WV Autism Training Center (R) ...	93200	<u>1,808,381</u>
10	Total.....		\$ 49,232,632

11 Any unexpended balances remaining in the
12 appropriations for Vista E-Learning (fund 0348,
13 appropriation 51900), State Priorities – Brownfield
14 Professional Development (fund 0348, appropriation
15 53100), Marshall University Graduate College Writing
16 Project (fund 0348, appropriation 80700), and WV Autism
17 Training Center (fund 0348, appropriation 93200) at the
18 close of the fiscal year 2019 are hereby reappropriated for
19 expenditure during the fiscal year 2020.

102-West Virginia School of Osteopathic Medicine

(WV Code Chapter 18B)

Fund 0336 FY 2020 Org 0476

1	West Virginia School of		
2	Osteopathic Medicine.....	17200	\$ 8,879,296

3	Rural Health		
4	Outreach Programs (R).....	37700	166,111
5	West Virginia School of		
6	Osteopathic Medicine		
7	BRIM Subsidy	40300	153,405
8	Rural Health Initiative –		
9	Medical Schools Support.....	58100	<u>397,592</u>
10	Total.....		\$ 9,596,404

11 Any unexpended balance remaining in the
 12 appropriation for Rural Health Outreach Programs (fund
 13 0336, appropriation 37700) at the close of fiscal year 2019
 14 is hereby reappropriated for expenditure during the fiscal
 15 year 2020.

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

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

103-Bluefield State College

(WV Code Chapter 18B)

Fund 0354 FY 2020 Org 0482

1	Bluefield State College.....	40800	\$ 6,383,221
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104-Concord University

(WV Code Chapter 18B)

Fund 0357 FY 2020 Org 0483

1	Concord University.....	41000	\$ 10,476,415
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105-Fairmont State University

(WV Code Chapter 18B)

Fund 0360 FY 2020 Org 0484

1	Fairmont State University.....	41400	\$ 18,600,341
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106-Glenville State College

(WV Code Chapter 18B)

Fund 0363 FY 2020 Org 0485

1	Glenville State College.....	42800	\$ 6,446,942
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107-Shepherd University

(WV Code Chapter 18B)

Fund 0366 FY 2020 Org 0486

1	Shepherd University	43200	\$ 12,683,829
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108-West Liberty University

(WV Code Chapter 18B)

Fund 0370 FY 2020 Org 0488

1	West Liberty University	43900	\$ 9,102,662
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109-West Virginia State University

(WV Code Chapter 18B)

Fund 0373 FY 2020 Org 0490

1	West Virginia State University	44100	\$ 11,342,512
2	West Virginia State University		
3	Land Grant Match.....	95600	<u>2,950,192</u>
4	Total.....		\$ 14,292,704

5 From the above appropriation for West Virginia State
 6 University (fund 0373, appropriation 44100), \$300,000
 7 shall be for the Healthy Grandfamilies program.

8 Total TITLE II, Section 1 – General Revenue
 9 (Including claims
 10 against the state)..... \$ 4,635,887,842

1 **Sec. 2. Appropriations from state road fund.** — From
 2 the state road fund there are hereby appropriated
 3 conditionally upon the fulfillment of the provisions set forth
 4 in Article 2, Chapter 11B of the Code the following
 5 amounts, as itemized, for expenditure during the fiscal year
 6 2020.

DEPARTMENT OF TRANSPORTATION

110-Division of Motor Vehicles

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

Fund 9007 FY 2020 Org 0802

	Appro- piation	State Road Fund
1 Personal Services and		
2 Employee Benefits.....	00100	\$ 25,977,939
3 Current Expenses	13000	16,187,194
4 Repairs and Alterations.....	06400	144,000
5 Equipment.....	07000	1,080,000
6 Buildings.....	25800	10,000
7 Other Assets.....	69000	2,600,000
8 BRIM Premium.....	91300	<u>78,586</u>
9 Total.....		\$ 46,077,719

111-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2020 Org 0803

1	Debt Service.....	04000	\$ 89,000,000
2	Maintenance.....	23700	336,386,000
3	Nonfederal Improvements	23701	224,046,854
4	Inventory Revolving	27500	4,000,000
5	Equipment Revolving	27600	22,500,000
6	General Operations	27700	91,663,229
7	Interstate Construction.....	27800	90,000,000
8	Other Federal Aid Programs	27900	370,000,000
9	Appalachian Programs.....	28000	100,000,000
10	Highway Litter Control.....	28200	1,719,000
11	Courtesy Patrol	28201	<u>5,000,000</u>
12	Total.....		\$1,334,315,083

13 The above appropriations are to be expended in
 14 accordance with the provisions of Chapters 17 and 17C of
 15 the code.

16 The Commissioner of Highways shall have the
 17 authority to operate revolving funds within the State Road
 18 Fund for the operation and purchase of various types of
 19 equipment used directly and indirectly in the construction
 20 and maintenance of roads and for the purchase of
 21 inventories and materials and supplies.

22 There is hereby appropriated in addition to the above
 23 appropriations, sufficient money for the payment of claims,
 24 accrued or arising during this budgetary period, to be paid
 25 in accordance with Sections 17 and 18, Article 2, Chapter
 26 14 of the code.

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

112-Office of Administrative Hearings

(WV Code Chapter 17C)

Fund 9027 FY 2020 Org 0808

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,698,752
3	Current Expenses	13000	338,278
4	Repairs and Alterations.....	06400	3,000
5	Equipment.....	07000	15,500
6	BRIM Premium.....	91300	<u>10,000</u>
7	Total.....		\$ 2,065,530
8	Total TITLE II, Section 2 – State Road Fund		
9	(Including claims		
10	against the state)		\$ <u>1,384,161,478</u>

11 **Sec. 3. Appropriations from other funds.** — From the
 12 funds designated there are hereby appropriated
 13 conditionally upon the fulfillment of the provisions set forth
 14 in Article 2, Chapter 11B of the Code the following
 15 amounts, as itemized, for expenditure during the fiscal year
 16 2020.

LEGISLATIVE

113-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2020 Org 2300

		Appro- priation	Other Funds
1	Personal Services and		
2	Employee Benefits.....	00100	\$ 498,020
3	Current Expenses	13000	133,903
4	Repairs and Alterations.....	06400	1,000
5	Economic Loss		
6	Claim Payment Fund	33400	2,000,000

7	Other Assets.....	69000	<u>3,700</u>
8	Total.....		\$ 2,636,623

JUDICIAL*114-Supreme Court –**Family Court Fund*

(WV Code Chapter 51)

Fund 1763 FY 2020 Org 2400

1	Current Expenses.....	13000	\$ 1,050,000
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*115-Supreme Court –**Court Advanced Technology Subscription Fund*

(WV Code Chapter 51)

Fund 1704 FY 2020 Org 2400

1	Current Expenses.....	13000	\$ 100,000
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*116-Supreme Court –**Adult Drug Court Participation Fund*

(WV Code Chapter 62)

Fund 1705 FY 2020 Org 2400

1	Current Expenses.....	13000	\$ 200,000
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EXECUTIVE*117-Governor's Office –**Minority Affairs Fund*

(WV Code Chapter 5)

Fund 1058 FY 2020 Org 0100

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 177,737
3	Current Expenses	13000	503,200
4	Martin Luther King, Jr.		
5	Holiday Celebration.....	03100	<u>8,926</u>
6	Total.....		\$ 689,863

118-Auditor's Office –

Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2020 Org 1200

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 799,211
3	Unclassified	09900	15,139
4	Current Expenses	13000	715,291
5	Repairs and Alterations.....	06400	2,600
6	Equipment.....	07000	426,741
7	Cost of Delinquent Land Sales	76800	<u>1,341,168</u>
8	Total.....		\$ 3,300,150

9 There is hereby appropriated from this fund, in addition
10 to the above appropriations if needed, the necessary amount
11 for the expenditure of funds other than Personal Services
12 and Employee Benefits to enable the division to pay the
13 direct expenses relating to land sales as provided in Chapter
14 11A of the West Virginia Code.

15 The total amount of these appropriations shall be paid
16 from the special revenue fund out of fees and collections as
17 provided by law.

119-Auditor's Office –

Local Government Purchasing Card Expenditure Fund

(WV Code Chapter 6)

Fund 1224 FY 2020 Org 1200

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 627,779
3	Current Expenses	13000	282,030
4	Repairs and Alterations.....	06400	6,000
5	Equipment.....	07000	10,805
6	Other Assets.....	69000	50,000
7	Statutory Revenue Distribution	74100	<u>3,500,000</u>
8	Total.....		\$ 4,476,614

9 There is hereby appropriated from this fund, in addition
10 to the above appropriations if needed, the amount necessary
11 to meet the transfer of revenue distribution requirements to
12 provide a proportionate share of rebates back to the general
13 fund of local governments based on utilization of the
14 program in accordance with W.Va. Code §6-9-2b.

120-Auditor's Office –

Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2020 Org 1200

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,487,017
3	Unclassified	09900	31,866
4	Current Expenses	13000	1,463,830
5	Repairs and Alterations.....	06400	12,400
6	Equipment.....	07000	394,700
7	Other Assets.....	69000	<u>900,000</u>
8	Total.....		\$ 5,289,813

121-Auditor's Office – Technology Support

and Acquisition Fund

(WV Code Chapter 12)

Fund 1233 FY 2020 Org 1200

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

4 Fifty percent of the deposits made into this fund shall be
5 transferred to the Treasurer’s Office – Technology Support
6 and Acquisition Fund (fund 1329, org 1300) for expenditure
7 for the purposes described in W.Va. Code §12-3-10c.

122-Auditor’s Office –

Purchasing Card Administration Fund

(WV Code Chapter 12)

Fund 1234 FY 2020 Org 1200

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,824,837
3	Current Expenses	13000	2,303,622
4	Repairs and Alterations.....	06400	5,500
5	Equipment.....	07000	650,000
6	Other Assets.....	69000	308,886
7	Statutory Revenue Distribution	74100	<u>8,000,000</u>
8	Total.....		\$ 14,092,845

9 There is hereby appropriated from this fund, in addition
10 to the above appropriations if needed, the amount necessary
11 to meet the transfer and revenue distribution requirements
12 to the Purchasing Improvement Fund (fund 2264), the
13 Hatfield-McCoy Regional Recreation Authority, and the
14 State Park Operating Fund (fund 3265) per W.Va. Code
15 §12-3-10d.

123-Auditor’s Office –

Chief Inspector’s Fund

(WV Code Chapter 6)

Fund 1235 FY 2020 Org 1200

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,583,096

3	Current Expenses	13000	765,915
4	Equipment	07000	<u>50,000</u>
5	Total		\$ 4,399,011

124-Auditor's Office –

Volunteer Fire Department Workers'

Compensation Premium Subsidy Fund

(WV Code Chapters 12 and 33)

Fund 1239 FY 2020 Org 1200

1	Volunteer Fire		
2	Department Workers'		
3	Compensation Subsidy	83200	\$ 2,500,000

125-Treasurer's Office

College Prepaid Tuition and Savings Program

Administrative Account

(WV Code Chapter 18)

Fund 1301 FY 2020 Org 1300

1	Personal Services and		
2	Employee Benefits	00100	\$ 810,372
3	Unclassified	09900	14,000
4	Current Expenses	13000	<u>619,559</u>
5	Total		\$ 1,443,931

126-Department of Agriculture –

Agriculture Fees Fund

(WV Code Chapter 19)

Fund 1401 FY 2020 Org 1400

1	Personal Services and		
2	Employee Benefits	00100	\$ 2,425,446

3	Unclassified	09900	37,425
4	Current Expenses	13000	1,856,184
5	Repairs and Alterations.....	06400	158,500
6	Equipment.....	07000	436,209
7	Other Assets.....	69000	<u>10,000</u>
8	Total.....		\$ 4,923,764

127-Department of Agriculture –

West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2020 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 78,251
3	Unclassified	09900	10,476
4	Current Expenses	13000	<u>963,404</u>
5	Total.....		\$ 1,052,131

128-Department of Agriculture –

General John McCausland Memorial Farm Fund

(WV Code Chapter 19)

Fund 1409 FY 2020 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 71,937
3	Unclassified	09900	2,100
4	Current Expenses	13000	89,500
5	Repairs and Alterations.....	06400	36,400
6	Equipment.....	07000	<u>15,000</u>
7	Total.....		\$ 214,937

8 The above appropriations shall be expended in
9 accordance with Article 26, Chapter 19 of the Code.

*129-Department of Agriculture –**Farm Operating Fund*

(WV Code Chapter 19)

Fund 1412 FY 2020 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 868,492
3	Unclassified	09900	15,173
4	Current Expenses	13000	1,367,464
5	Repairs and Alterations.....	06400	388,722
6	Equipment.....	07000	399,393
7	Other Assets.....	69000	<u>20,000</u>
8	Total.....		\$ 3,059,244

*130-Department of Agriculture –**Donated Food Fund*

(WV Code Chapter 19)

Fund 1446 FY 2020 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,030,451
3	Unclassified	09900	45,807
4	Current Expenses	13000	3,410,542
5	Repairs and Alterations.....	06400	128,500
6	Equipment.....	07000	10,000
7	Other Assets.....	69000	27,000
8	Land.....	73000	<u>250,000</u>
9	Total.....		\$ 4,902,300

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

(WV Code Chapter 7)

Fund 1465 FY 2020 Org 1400

1 Current Expenses..... 13000 \$ 112,500

132-Department of Agriculture –

West Virginia Spay Neuter Assistance Fund

(WV Code Chapter 19)

Fund 1481 FY 2020 Org 1400

1 Current Expenses..... 13000 \$ 500,000

133-Department of Agriculture –

Veterans and Warriors to Agriculture Fund

(WV Code Chapter 19)

Fund 1483 FY 2020 Org 1400

1 Current Expenses..... 13000 \$ 7,500

134-Department of Agriculture –

State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 1484 FY 2020 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,218,564
3	Unclassified	09900	17,000
4	Current Expenses	13000	1,143,306
5	Repairs and Alterations.....	06400	82,500
6	Equipment.....	07000	76,000
7	Buildings.....	25800	1,000
8	Other Assets.....	69000	10,000
9	Land.....	73000	<u>1,000</u>
10	Total.....		\$ 2,549,370

135-Attorney General –

Antitrust Enforcement Fund

(WV Code Chapter 47)

Fund 1507 FY 2020 Org 1500

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 363,466
3	Current Expenses	13000	148,803
4	Repairs and Alterations.....	06400	1,000
5	Equipment.....	07000	<u>1,000</u>
6	Total.....		\$ 514,269

*136-Attorney General –**Preneed Burial Contract Regulation Fund*

(WV Code Chapter 47)

Fund 1513 FY 2020 Org 1500

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 222,569
3	Current Expenses	13000	54,615
4	Repairs and Alterations.....	06400	1,000
5	Equipment.....	07000	<u>1,000</u>
6	Total.....		\$ 279,184

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

(WV Code Chapter 47)

Fund 1514 FY 2020 Org 1500

1	Current Expenses	13000	\$ 901,135
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*138-Secretary of State –**Service Fees and Collection Account*

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2020 Org 1600

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,065,106
3	Unclassified	09900	4,524
4	Current Expenses	13000	<u>8,036</u>
5	Total.....		\$ 1,077,666

139-Secretary of State –

General Administrative Fees Account

(WV Code Chapters 3, 5, and 59)

Fund 1617 FY 2020 Org 1600

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,947,630
3	Unclassified	09900	25,529
4	Current Expenses	13000	976,716
5	Technology Improvements	59900	<u>570,000</u>
6	Total.....		\$ 4,519,875

DEPARTMENT OF ADMINISTRATION

140-Department of Administration –

Office of the Secretary –

Tobacco Settlement Fund

(WV Code Chapter 4)

Fund 2041 FY 2020 Org 0201

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

141-Department of Administration –

Office of the Secretary –

Employee Pension and Health Care Benefit Fund

(WV Code Chapter 18)

Fund 2044 FY 2020 Org 0201

- 1 Current Expenses..... 13000 \$ *37,582,000
- 2 The above appropriation for Current Expenses (fund
- 3 2044, appropriation 13000) shall be transferred to the
- 4 Consolidated Public Retirement Board – Teachers’
- 5 Accumulation Fund (fund 2600).

142-Department of Administration –

Division of Finance –

Shared Services Section Fund

(WV Code Chapter 5A)

Fund 2020 FY 2020 Org 0209

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

143-Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2020 Org 0210

- 1 Personal Services and
- 2 Employee Benefits..... 00100 \$ 22,464,463
- 3 Unclassified 09900 382,354
- 4 Current Expenses 13000 13,378,766
- 5 Repairs and Alterations..... 06400 1,000
- 6 Equipment..... 07000 2,050,000
- 7 Other Assets..... 69000 1,045,000
- 8 Total..... \$ 39,321,583

- 9 The total amount of these appropriations shall be paid
- 10 from a special revenue fund out of collections made by the

*NOTE: The Governor reduced Item 141, line 1, by \$5,372,000, from \$42,954,000 to \$37,582,000.

11 Division of Information Services and Communications as
 12 provided by law.

13 Each spending unit operating from the General Revenue
 14 Fund, from special revenue funds or receiving
 15 reimbursement for postage from the federal government
 16 shall be charged monthly for all postage meter service and
 17 shall reimburse the revolving fund monthly for all such
 18 amounts.

144-Division of Purchasing –

Vendor Fee Fund

(WV Code Chapter 5A)

Fund 2263 FY 2020 Org 0213

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 741,589
3	Unclassified	09900	2,382
4	Current Expenses	13000	208,115
5	Repairs and Alterations.....	06400	5,000
6	Equipment.....	07000	2,500
7	Other Assets.....	69000	2,500
8	BRIM Premium.....	91300	<u>810</u>
9	Total.....		\$ 962,896

145-Division of Purchasing –

Purchasing Improvement Fund

(WV Code Chapter 5A)

Fund 2264 FY 2020 Org 0213

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 778,176
3	Unclassified	09900	5,562
4	Current Expenses	13000	393,066
5	Repairs and Alterations.....	06400	500
6	Equipment.....	07000	500

7	Other Assets.....	69000	500
8	BRIM Premium.....	91300	<u>850</u>
9	Total.....		\$ 1,179,154

*146-Travel Management –**Aviation Fund*

(WV Code Chapter 5A)

Fund 2302 FY 2020 Org 0215

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

147-Fleet Management Division Fund

(WV Code Chapter 5A)

Fund 2301 FY 2020 Org 0216

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 757,145
3	Unclassified	09900	4,000
4	Current Expenses	13000	8,130,614
5	Repairs and Alterations.....	06400	12,000
6	Equipment.....	07000	800,000
7	Other Assets.....	69000	<u>2,000</u>
8	Total.....		\$ 9,705,759

148-Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2020 Org 0222

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 4,760,683
3	Unclassified	09900	51,418
4	Current Expenses	13000	1,262,813
5	Repairs and Alterations.....	06400	5,000
6	Equipment.....	07000	20,000
7	Other Assets.....	69000	<u>60,000</u>
8	Total.....		\$ 6,159,914

9 The total amount of these appropriations shall be paid
10 from a special revenue fund out of fees collected by the
11 Division of Personnel.

149-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2020 Org 0228

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 251,663
3	Unclassified	09900	4,023
4	Current Expenses	13000	297,528
5	Repairs and Alterations.....	06400	600
6	Equipment.....	07000	500
7	Other Assets.....	69000	<u>500</u>
8	Total.....		\$ 554,814

150-Office of Technology –

Chief Technology Officer Administration Fund

(WV Code Chapter 5A)

Fund 2531 FY 2020 Org 0231

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 414,722
3	Unclassified	09900	6,949
4	Current Expenses	13000	227,116
5	Repairs and Alterations.....	06400	1,000

6	Equipment.....	07000	50,000
7	Other Assets.....	69000	<u>10,000</u>
8	Total.....		\$ 709,787

9 From the above fund, the provisions of W.Va. Code
 10 §11B-2-18 shall not operate to permit expenditures in
 11 excess of the funds authorized for expenditure herein.

DEPARTMENT OF COMMERCE

151-Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2020 Org 0305

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,574,177
3	Current Expenses	13000	282,202
4	Repairs and Alterations.....	06400	53,000
5	Equipment.....	07000	<u>300,000</u>
6	Total.....		\$ 2,209,379

152-Division of Forestry –

Timbering Operations Enforcement Fund

(WV Code Chapter 19)

Fund 3082 FY 2020 Org 0305

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 239,244
3	Current Expenses	13000	87,036
4	Repairs and Alterations.....	06400	<u>11,250</u>
5	Total.....		\$ 337,530

153-Division of Forestry –

Severance Tax Operations

(WV Code Chapter 11)

Fund 3084 FY 2020 Org 0305

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 859,626
3	Current Expenses.....	13000	<u>435,339</u>
4	Total.....		\$ 1,294,965

154-Geological and Economic Survey –

Geological and Analytical Services Fund

(WV Code Chapter 29)

Fund 3100 FY 2020 Org 0306

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 37,966
3	Unclassified	09900	2,182
4	Current Expenses	13000	141,631
5	Repairs and Alterations.....	06400	50,000
6	Equipment.....	07000	20,000
7	Other Assets.....	69000	<u>10,000</u>
8	Total.....		\$ 261,779

9 The above appropriations shall be used in accordance
10 with W.Va. Code §29-2-4.

155-West Virginia Development Office –

Department of Commerce –

Marketing and Communications Operating Fund

(WV Code Chapter 5B)

Fund 3002 FY 2020 Org 0307

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,592,400
3	Equipment.....	07000	36,000
4	Unclassified	09900	30,000
5	Current Expenses	13000	<u>1,446,760</u>
6	Total.....		\$ 3,105,160

*156-West Virginia Development Office –
Office of Coalfield Community Development*

(WV Code Chapter 5B)

Fund 3162 FY 2020 Org 0307

1	Personal Services and			
2	Employee Benefits.....	00100	\$	435,661
3	Unclassified	09900		8,300
4	Current Expenses	13000		<u>399,191</u>
5	Total.....		\$	843,152

157-West Virginia Development Office

Entrepreneurship and Innovation Investment Fund

(WV Code Chapter 5B)

Fund 3014 FY 2020 Org 0307

1	Entrepreneurship and Innovation			
2	Investment Fund.....	#####	\$	500,000

158-Division of Labor –

HVAC Fund

(WV Code Chapter 21)

Fund 3186 FY 2020 Org 0308

1	Personal Services and			
2	Employee Benefits.....	00100	\$	300,000
3	Unclassified	09900		4,000
4	Current Expenses	13000		85,000
5	Repairs and Alterations.....	06400		1,500
6	Buildings.....	25800		1,000
7	BRIM Premium.....	91300		<u>8,500</u>
8	Total.....		\$	400,000

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

(WV Code Chapter 21)

Fund 3187 FY 2020 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,182,000
3	Unclassified	09900	21,589
4	Current Expenses	13000	597,995
5	Repairs and Alterations.....	06400	15,000
6	Buildings.....	25800	5,000
7	BRIM Premium.....	91300	<u>8,500</u>
8	Total.....		\$ 3,830,084

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

(WV Code Chapter 21)

Fund 3188 FY 2020 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 397,862
3	Unclassified	09900	2,261
4	Current Expenses	13000	44,112
5	Repairs and Alterations.....	06400	2,000
6	Buildings.....	25800	1,000
7	BRIM Premium.....	91300	<u>8,500</u>
8	Total.....		\$ 455,735

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

(WV Code Chapter 21)

Fund 3189 FY 2020 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 82,716
3	Unclassified	09900	1,000
4	Current Expenses	13000	15,000
5	Repairs and Alterations.....	06400	2,000
6	Buildings.....	25800	1,000
7	BRIM Premium.....	91300	<u>1,000</u>
8	Total.....		\$ 102,716

162-Division of Labor –

Crane Operator Certification Fund

(WV Code Chapter 21)

Fund 3191 FY 2020 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 191,899
3	Unclassified	09900	1,380
4	Current Expenses	13000	49,765
5	Repairs and Alterations.....	06400	1,500
6	Buildings.....	25800	1,000
7	BRIM Premium.....	91300	<u>8,500</u>
8	Total.....		\$ 254,044

163-Division of Labor –

Amusement Rides and Amusement Attraction Safety Fund

(WV Code Chapter 21)

Fund 3192 FY 2020 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 187,462
3	Unclassified	09900	1,281
4	Current Expenses	13000	44,520
5	Repairs and Alterations.....	06400	2,000
6	Buildings.....	25800	1,000
7	BRIM Premium.....	91300	<u>8,500</u>
8	Total.....		\$ 244,763

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

(WV Code Chapter 21)

Fund 3195 FY 2020 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 289,199
3	Unclassified	09900	1,847
4	Current Expenses	13000	43,700
5	Repairs and Alterations.....	06400	1,000
6	Buildings.....	25800	1,000
7	BRIM Premium.....	91300	<u>3,404</u>
8	Total.....		\$ 340,150

*165-Division of Labor –**Weights and Measures Fund*

(WV Code Chapter 47)

Fund 3196 FY 2020 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,500,000
3	Current Expenses	13000	227,000
4	Repairs and Alterations.....	06400	28,000
5	Equipment.....	07000	15,000
6	BRIM Premium.....	91300	<u>8,500</u>
7	Total.....		\$ 1,778,500

*166-Division of Labor –**Bedding and Upholstery Fund*

(WV Code Chapter 21)

Fund 3198 FY 2020 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 150,000
3	Unclassified	09900	2,000

4	Current Expenses	13000	43,000
5	Repairs and Alterations.....	06400	2,000
6	Buildings.....	25800	1,000
7	BRIM Premium.....	91300	<u>2,000</u>
8	Total.....		\$ 200,000

167-Division of Labor –

Psychophysiological Examiners Fund

(WV Code Chapter 21)

Fund 3199 FY 2020 Org 0308

1	Current Expenses.....	13000	\$ 4,000
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168-Division of Natural Resources –

License Fund – Wildlife Resources

(WV Code Chapter 20)

Fund 3200 FY 2020 Org 0310

1	Wildlife Resources.....	02300	\$ 7,090,036
2	Administration	15500	1,694,974
3	Capital Improvements and		
4	Land Purchase (R)	24800	1,695,961
5	Law Enforcement.....	80600	<u>7,027,929</u>
6	Total.....		\$ 17,508,900

7 The total amount of these appropriations shall be paid
8 from a special revenue fund out of fees collected by the
9 Division of Natural Resources.

10 Any unexpended balance remaining in the
11 appropriation for Capital Improvements and Land Purchase
12 (fund 3200, appropriation 24800) at the close of the fiscal
13 year 2019 is hereby reappropriated for expenditure during
14 the fiscal year 2020.

*169-Division of Natural Resources –
Natural Resources Game Fish and Aquatic Life Fund*

(WV Code Chapter 22)

Fund 3202 FY 2020 Org 0310

1	Current Expenses	13000	\$	125,000
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170-Division of Natural Resources –

Nongame Fund

(WV Code Chapter 20)

Fund 3203 FY 2020 Org 0310

1	Personal Services and			
2	Employee Benefits.....	00100	\$	688,103
3	Current Expenses	13000		201,810
4	Equipment.....	07000		<u>106,615</u>
5	Total.....		\$	996,528

171-Division of Natural Resources –

Planning and Development Division

(WV Code Chapter 20)

Fund 3205 FY 2020 Org 0310

1	Personal Services and			
2	Employee Benefits.....	00100	\$	457,738
3	Current Expenses	13000		157,864
4	Repairs and Alterations.....	06400		15,016
5	Equipment.....	07000		8,300
6	Buildings.....	25800		8,300
7	Other Assets.....	69000		2,000,000
8	Land.....	73000		<u>31,700</u>
9	Total.....		\$	2,678,918

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

(WV Code Chapter 20)

Fund 3253 FY 2020 Org 0310

1	Personal Services and			
2	Employee Benefits.....	00100	\$	67,641
3	Current Expenses	13000		64,778
4	Equipment.....	07000		1,297
5	Buildings.....	25800		<u>6,969</u>
6	Total.....		\$	140,685

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

(WV Code Chapter 20)

Fund 3256 FY 2020 Org 0310

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

*174-Division of Miners' Health, Safety and Training –**Special Health, Safety and Training Fund*

(WV Code Chapter 22A)

Fund 3355 FY 2020 Org 0314

1	Personal Services and			
2	Employee Benefits.....	00100	\$	501,228
3	WV Mining Extension Service	02600		150,000
4	Unclassified	09900		40,985
5	Current Expenses	13000		1,954,557
6	Buildings.....	25800		481,358
7	Directed Transfer	70000		1,300,000

8	Land.....	73000	<u>1,000,000</u>
9	Total.....		\$ 5,428,128

10 From the above appropriation for Directed Transfer
 11 (Fund 3355, appropriation 70000), \$1,100,000 shall be
 12 transferred to the State Rail Authority – Commuter Rail
 13 Access Fund (fund 8402) and \$200,000 shall be transferred
 14 to the Department of Health and Human Resources,
 15 Division of Human Services – Medical Services Trust Fund
 16 (Fund 5185).

175-Department of Commerce –

Office of the Secretary –

Broadband Enhancement Fund

Fund 3013 FY 2020 Org 0327

1	Current Expenses.....	13000	\$ 1,780,000
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176-Office of Energy –

Energy Assistance

(WV Code Chapter 5B)

Fund 3010 FY 2020 Org 0328

1	Energy Assistance – Total	64700	\$ 7,211
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177-State Board of Rehabilitation –

Division of Rehabilitation Services –

West Virginia Rehabilitation Center Special Account

(WV Code Chapter 18)

Fund 8664 FY 2020 Org 0932

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 119,738

3	Current Expenses	13000	2,180,122
4	Repairs and Alterations.....	06400	85,500
5	Equipment.....	07000	220,000
6	Buildings.....	25800	150,000
7	Other Assets.....	69000	<u>150,000</u>
8	Total.....		\$ 2,905,360

DEPARTMENT OF EDUCATION

178-State Board of Education –

Strategic Staff Development

(WV Code Chapter 18)

Fund 3937 FY 2020 Org 0402

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

179-State Board of Education –

School Construction Fund

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2020 Org 0402

1	SBA Construction Grants	24000	\$ 35,845,818
2	Directed Transfer	70000	<u>1,371,182</u>
3	Total.....		\$ 37,217,000

4 The above appropriation for Directed Transfer (fund
 5 3951, appropriation 70000) shall be transferred to the
 6 School Building Authority Fund (3959) for the
 7 administrative expenses of the School Building
 8 Authority.

180-School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2020 Org 0402

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,134,522
3	Current Expenses	13000	244,100
4	Repairs and Alterations.....	06400	13,150
5	Equipment.....	07000	<u>26,000</u>
6	Total.....		\$ 1,417,772

DEPARTMENT OF ARTS, CULTURE, AND HISTORY*181-Division of Culture and History –**Public Records and Preservation Revenue Account*

(WV Code Chapter 5A)

Fund 3542 FY 2020 Org 0432

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 226,624
3	Current Expenses	13000	862,241
4	Equipment.....	07000	75,000
5	Buildings.....	25800	1,000
6	Other Assets.....	69000	52,328
7	Land.....	73000	<u>1,000</u>
8	Total.....		\$ 1,218,193

DEPARTMENT OF ENVIRONMENTAL PROTECTION*182-Solid Waste Management Board*

(WV Code Chapter 22C)

Fund 3288 FY 2020 Org 0312

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 842,305

3	Current Expenses	13000	2,060,457
4	Repairs and Alterations.....	06400	1,000
5	Equipment.....	07000	5,000
6	Other Assets.....	69000	<u>4,403</u>
7	Total.....		\$ 2,913,165

183-Division of Environmental Protection –

Hazardous Waste Management Fund

(WV Code Chapter 22)

Fund 3023 FY 2020 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 779,766
3	Current Expenses	13000	155,969
4	Repairs and Alterations.....	06400	500
5	Equipment.....	07000	1,505
6	Unclassified	09900	8,072
7	Other Assets.....	69000	<u>2,000</u>
8	Total.....		\$ 947,812

184-Division of Environmental Protection –

Air Pollution Education and Environment Fund

(WV Code Chapter 22)

Fund 3024 FY 2020 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 950,135
3	Current Expenses	13000	1,026,863
4	Repairs and Alterations.....	06400	13,000
5	Equipment.....	07000	53,105
6	Unclassified	09900	14,647
7	Other Assets.....	69000	<u>20,000</u>
8	Total.....		\$ 2,077,750

*185-Division of Environmental Protection –**Special Reclamation Fund*

(WV Code Chapter 22)

Fund 3321 FY 2020 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,627,573
3	Current Expenses	13000	16,185,006
4	Repairs and Alterations.....	06400	79,950
5	Equipment.....	07000	130,192
6	Other Assets.....	69000	<u>32,000</u>
7	Total.....		\$ 18,054,721

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

(WV Code Chapter 22)

Fund 3322 FY 2020 Org 0313

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

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

(WV Code Chapter 22)

Fund 3323 FY 2020 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,498,896
3	Current Expenses	13000	1,237,758
4	Repairs and Alterations.....	06400	40,600
5	Equipment.....	07000	8,000

6	Unclassified	09900	44,700
7	Other Assets	69000	<u>15,000</u>
8	Total.....		\$ 4,844,954

188-Division of Environmental Protection –

Mining and Reclamation Operations Fund

(WV Code Chapter 22)

Fund 3324 FY 2020 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,566,280
3	Current Expenses	13000	2,202,231
4	Repairs and Alterations.....	06400	60,260
5	Equipment.....	07000	83,000
6	Unclassified	09900	920
7	Other Assets.....	69000	<u>57,500</u>
8	Total.....		\$ 5,970,191

189-Division of Environmental Protection –

Underground Storage Tank

Administrative Fund

(WV Code Chapter 22)

Fund 3325 FY 2020 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 476,417
3	Current Expenses	13000	318,420
4	Repairs and Alterations.....	06400	5,350
5	Equipment.....	07000	3,610
6	Unclassified	09900	7,520
7	Other Assets.....	69000	<u>3,500</u>
8	Total.....		\$ 814,817

*190-Division of Environmental Protection –
Hazardous Waste Emergency Response Fund*

(WV Code Chapter 22)

Fund 3331 FY 2020 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 598,154
3	Current Expenses	13000	767,905
4	Repairs and Alterations.....	06400	7,014
5	Equipment.....	07000	9,000
6	Unclassified	09900	10,616
7	Other Assets.....	69000	<u>3,500</u>
8	Total.....		\$ 1,396,189

191-Division of Environmental Protection –

*Solid Waste Reclamation and
Environmental Response Fund*

(WV Code Chapter 22)

Fund 3332 FY 2020 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 825,811
3	Current Expenses	13000	3,604,737
4	Repairs and Alterations.....	06400	25,000
5	Equipment.....	07000	31,500
6	Unclassified	09900	22,900
7	Buildings.....	25800	500
8	Other Assets.....	69000	<u>1,000</u>
9	Total.....		\$ 4,511,448

192-Division of Environmental Protection –

Solid Waste Enforcement Fund

(WV Code Chapter 22)

Fund 3333 FY 2020 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,238,054
3	Current Expenses	13000	970,229
4	Repairs and Alterations.....	06400	30,930
5	Equipment.....	07000	23,356
6	Unclassified	09900	37,145
7	Other Assets.....	69000	<u>25,554</u>
8	Total.....		\$ 4,325,268

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

(WV Code Chapter 22)

Fund 3336 FY 2020 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 5,934,859
3	Current Expenses	13000	1,469,467
4	Repairs and Alterations.....	06400	84,045
5	Equipment.....	07000	103,601
6	Unclassified	09900	70,572
7	Other Assets.....	69000	<u>52,951</u>
8	Total.....		\$ 7,715,495

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

(WV Code Chapter 22)

Fund 3340 FY 2020 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 344,792
3	Current Expenses	13000	208,188
4	Repairs and Alterations.....	06400	1,000

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

(WV Code Chapter 22)

Fund 3490 FY 2020 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,250,562
3	Current Expenses	13000	642,934
4	Repairs and Alterations.....	06400	30,112
5	Equipment.....	07000	23,500
6	Unclassified	09900	1,180
7	Other Assets.....	69000	<u>11,520</u>
8	Total.....		\$ 1,959,808

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

(WV Code Chapter 22C)

Fund 3371 FY 2020 Org 0315

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 162,161
3	Current Expenses	13000	161,225
4	Repairs and Alterations.....	06400	1,000
5	Equipment.....	07000	9,481
6	Other Assets.....	69000	<u>1,500</u>
7	Total.....		\$ 335,367

DEPARTMENT OF HEALTH AND HUMAN RESOURCES*200-Division of Health –**Ryan Brown Addiction Prevention and Recovery Fund*

(WV Code Chapter 19)

Fund 5111 FY 2020 Org 0506

1	Current Expenses	13000	\$ 13,588,654
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*201-Division of Health –**The Vital Statistics Account*

(WV Code Chapter 16)

Fund 5144 FY 2020 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 938,484
3	Unclassified	09900	15,500
4	Current Expenses	13000	<u>2,757,788</u>
5	Total.....		\$ 3,711,772

*202-Division of Health –**Hospital Services Revenue Account**Special Fund**Capital Improvement, Renovation and Operations*

(WV Code Chapter 16)

Fund 5156 FY 2020 Org 0506

1	Institutional Facilities Operations..	33500	\$ 35,555,221
2	Medical Services Trust Fund		
3	– Transfer.....	51200	<u>27,800,000</u>
4	Total.....		\$ 63,355,221

5 The total amount of these appropriations shall be paid
6 from the Hospital Services Revenue Account Special Fund
7 created by W.Va. Code §16-1-13, and shall be used for
8 operating expenses and for improvements in connection
9 with existing facilities.

10 Additional funds have been appropriated in fund 0525,
11 fiscal year 2020, organization 0506, for the operation of the
12 institutional facilities. The Secretary of the Department of
13 Health and Human Resources is authorized to utilize up to
14 ten percent of the funds from the appropriation for
15 Institutional Facilities Operations to facilitate cost effective
16 and cost saving services at the community level.

17 Necessary funds from the above appropriation may be
 18 used for medical facilities operations, either in connection
 19 with this fund or in connection with the appropriation
 20 designated Institutional Facilities Operations in the
 21 Consolidated Medical Service Fund (fund 0525,
 22 organization 0506).

203-Division of Health –

Laboratory Services Fund

(WV Code Chapter 16)

Fund 5163 FY 2020 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 936,712
3	Unclassified	09900	18,114
4	Current Expenses	13000	<u>1,803,327</u>
5	Total.....		\$ 2,758,153

204-Division of Health –

The Health Facility Licensing Account

(WV Code Chapter 16)

Fund 5172 FY 2020 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 645,446
3	Unclassified	09900	7,113
4	Current Expenses	13000	<u>98,247</u>
5	Total.....		\$ 750,806

205-Division of Health –

Hepatitis B Vaccine

(WV Code Chapter 16)

Fund 5183 FY 2020 Org 0506

1	Current Expenses	13000	\$ 9,740
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*206-Division of Health –**Lead Abatement Account*

(WV Code Chapter 16)

Fund 5204 FY 2020 Org 0506

1	Personal Services and			
2	Employee Benefits.....	00100	\$	19,100
3	Unclassified	09900		373
4	Current Expenses	13000		<u>17,875</u>
5	Total.....		\$	37,348

*207-Division of Health –**West Virginia Birth-to-Three Fund*

(WV Code Chapter 16)

Fund 5214 FY 2020 Org 0506

1	Personal Services and			
2	Employee Benefits.....	00100	\$	691,978
3	Unclassified	09900		223,999
4	Current Expenses	13000		<u>28,053,549</u>
5	Total.....		\$	28,969,526

*208-Division of Health –**Tobacco Control Special Fund*

(WV Code Chapter 16)

Fund 5218 FY 2020 Org 0506

1	Current Expenses	13000	\$	7,579
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*209-Division of Health –**Medical Cannabis Program Fund*

(WV Code Chapter 16A)

Fund 5420 FY 2020 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 509,658
3	Current Expenses	13000	1,151,040
4	Other Assets	69000	<u>895,000</u>
5	Total.....		\$ 2,555,698

210-West Virginia Health Care Authority –

Health Care Cost Review Fund

(WV Code Chapter 16)

Fund 5375 FY 2020 Org 0507

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,345,380
3	Hospital Assistance.....	02500	50,000
4	Unclassified	09900	100
5	Current Expenses	13000	754,645
6	Repairs and Alterations.....	06400	500
7	Equipment.....	07000	<u>300</u>
8	Total.....		\$ 2,150,925

9 The above appropriation is to be expended in
 10 accordance with and pursuant to the provisions of W.Va.
 11 Code §16-29B and from the special revolving fund
 12 designated Health Care Cost Review Fund.

211-West Virginia Health Care Authority –

Certificate of Need Program Fund

(WV Code Chapter 16)

Fund 5377 FY 2020 Org 0507

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 829,798
3	Current Expenses	13000	<u>474,967</u>
4	Total.....		\$ 1,304,765

212-Division of Human Services –

Health Care Provider Tax –

Medicaid State Share Fund

(WV Code Chapter 11)

Fund 5090 FY 2020 Org 0511

1	Medical Services.....	18900	\$ 213,594,315
2	Medical Services		
3	Administrative Costs	78900	<u>242,287</u>
4	Total.....		\$ 213,836,602

5 The above appropriation for Medical Services
6 Administrative Costs (fund 5090, appropriation 78900)
7 shall be transferred to a special revenue account in the
8 treasury for use by the Department of Health and Human
9 Resources for administrative purposes. The remainder of all
10 moneys deposited in the fund shall be transferred to the
11 West Virginia Medical Services Fund (fund 5084).

213-Division of Human Services –

Child Support Enforcement Fund

(WV Code Chapter 48A)

Fund 5094 FY 2020 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 24,809,509
3	Unclassified	09900	380,000
4	Current Expenses	13000	<u>12,810,491</u>
5	Total.....		\$ 38,000,000

214-Division of Human Services –

Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2020 Org 0511

1	Medical Services.....	18900	\$ 82,227,707
2	Medical Services		
3	Administrative Costs	78900	<u>602,486</u>
4	Total.....		\$ 82,830,193

5 The above appropriation to Medical Services shall be
6 used to provide state match of Medicaid expenditures as
7 defined and authorized in subsection (c) of W.Va. Code §9-
8 4A-2a. Expenditures from the fund are limited to the
9 following: payment of backlogged billings, funding for
10 services to future federally mandated population groups and
11 payment of the required state match for Medicaid
12 disproportionate share payments. The remainder of all
13 moneys deposited in the fund shall be transferred to the
14 Division of Human Services accounts.

*215-Division of Human Services –**James “Tiger” Morton Catastrophic Illness Fund*

(WV Code Chapter 16)

Fund 5454 FY 2020 Org 0511

1	Unclassified	09900	\$ 7,000
2	Current Expenses	13000	<u>693,000</u>
3	Total.....		\$ 700,000

*216-Division of Human Services –**Domestic Violence Legal Services Fund*

(WV Code Chapter 48)

Fund 5455 FY 2020 Org 0511

1	Current Expenses.....	13000	\$ 900,000
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217-Division of Human Services –

West Virginia Works Separate State College Program Fund

(WV Code Chapter 9)

Fund 5467 FY 2020 Org 0511

1	Current Expenses.....	13000	\$	500,000
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218-Division of Human Services –

West Virginia Works Separate State

Two-Parent Program Fund

(WV Code Chapter 9)

Fund 5468 FY 2020 Org 0511

1	Current Expenses.....	13000	\$	1,500,000
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219-Division of Human Services –

Marriage Education Fund

(WV Code Chapter 9)

Fund 5490 FY 2020 Org 0511

1	Personal Services and			
2	Employee Benefits.....	00100	\$	10,000
3	Current Expenses.....	13000		<u>25,000</u>
4	Total.....		\$	35,000

**DEPARTMENT OF MILITARY AFFAIRS AND
PUBLIC SAFETY**

220-Department of Military Affairs and Public Safety –

Office of the Secretary –

Law-Enforcement, Safety and Emergency Worker

Funeral Expense Payment Fund

(WV Code Chapter 15)

Fund 6003 FY 2020 Org 0601

1 Current Expenses 13000 \$ 32,000

221-State Armory Board –

General Armory Fund

(WV Code Chapter 15)

Fund 6057 FY 2020 Org 0603

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,681,247
3	Current Expenses	13000	650,000
4	Repairs and Alterations.....	06400	385,652
5	Equipment.....	07000	250,000
6	Buildings.....	25800	770,820
7	Other Assets.....	69000	100,000
8	Land.....	73000	<u>200,000</u>
9	Total.....		\$ 4,037,719

10 From the above appropriations, the Adjutant General
 11 may receive and expend funds to conduct operations and
 12 activities to include functions of the Military Authority. The
 13 Adjutant General may transfer funds between
 14 appropriations, except no funds may be transferred to
 15 Personal Services and Employee Benefits (fund 6057,
 16 appropriation 00100).

222-Division of Homeland Security

And Emergency Management –

Statewide Interoperable Radio Network Account

(WV Code Chapter 15)

Fund 6208 FY 2020 Org 0606

1 Current Expenses 13000 \$ 80,000

*223-Division of Homeland Security and
Emergency Management –
West Virginia Interoperable Radio Project
(WV Code Chapter 24)*

Fund 6295 FY 2020 Org 0606

1	Current Expenses.....	13000	\$ 2,000,000
2	Any unexpended balance remaining in the		
3	appropriation for Unclassified – Total (fund 6295,		
4	appropriation 09600) at the close of fiscal year 2019 is		
5	hereby reappropriated for expenditure during the fiscal year		
6	2020.		

*224-Division of Corrections and Rehabilitation –
Parolee Supervision Fees
(WV Code Chapter 15A)*

Fund 6362 FY 2020 Org 0608

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,087,848
3	Unclassified	09900	9,804
4	Current Expenses.....	13000	758,480
5	Equipment.....	07000	30,000
6	Other Assets.....	69000	<u>40,129</u>
7	Total.....		\$ 1,926,261

*225-Division of Corrections and Rehabilitation –
Regional Jail and Correctional Facility Authority
(WV Code Chapter 15A)*

Fund 6675 FY 2020 Org 0608

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 506,450

3	Debt Service.....	04000	9,000,000
4	Current Expenses.....	13000	<u>245,852</u>
5	Total.....		\$ 9,752,302

226-West Virginia State Police –

Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

Fund 6501 FY 2020 Org 0612

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,907,726
3	Current Expenses.....	13000	1,488,211
4	Repairs and Alterations.....	06400	204,500
5	Equipment.....	07000	3,770,751
6	Buildings.....	25800	534,000
7	Other Assets.....	69000	5,000
8	BRIM Premium.....	91300	<u>302,432</u>
9	Total.....		\$ 8,212,620

10 The total amount of these appropriations shall be paid
 11 from the special revenue fund out of fees collected for
 12 inspection stickers as provided by law.

227-West Virginia State Police –

Forensic Laboratory Fund

(WV Code Chapter 15)

Fund 6511 FY 2020 Org 0612

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 600,000
3	Current Expenses.....	13000	90,000
4	Repairs and Alterations.....	06400	5,000
5	Equipment.....	07000	<u>545,000</u>
6	Total.....		\$ 1,240,000

228-West Virginia State Police –

Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513 FY 2020 Org 0612

1	Current Expenses	13000	\$ 1,327,000
2	Equipment.....	07000	3,491,895
3	BRIM Premium.....	91300	<u>154,452</u>
4	Total.....		\$ 4,973,347

5 The total amount of these appropriations shall be paid
 6 from the special revenue fund out of receipts collected
 7 pursuant to W.Va. Code §11-15-9a and 16 and paid into a
 8 revolving fund account in the State Treasury.

229-West Virginia State Police –

Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

Fund 6516 FY 2020 Org 0612

1	Buildings.....	25800	\$ 1,022,778
2	Land.....	73000	1,000
3	BRIM Premium.....	91300	<u>77,222</u>
4	Total.....		\$ 1,101,000

230-West Virginia State Police –

Surplus Transfer Account

(WV Code Chapter 15)

Fund 6519 FY 2020 Org 0612

1	Current Expenses	13000	\$ 225,000
2	Repairs and Alterations.....	06400	20,000
3	Equipment.....	07000	250,000
4	Buildings.....	25800	40,000

5	Other Assets.....	69000	45,000
6	BRIM Premium.....	91300	<u>5,000</u>
7	Total.....		\$ 585,000

231-West Virginia State Police –

Central Abuse Registry Fund

(WV Code Chapter 15)

Fund 6527 FY 2020 Org 0612

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 256,629
3	Current Expenses	13000	51,443
4	Repairs and Alterations.....	06400	500
5	Equipment.....	07000	300,500
6	Other Assets.....	69000	300,500
7	BRIM Premium.....	91300	<u>18,524</u>
8	Total.....		\$ 928,096

232-West Virginia State Police –

Bail Bond Enforcer Account

(WV Code Chapter 15)

Fund 6532 FY 2020 Org 0612

1	Current Expenses	13000	\$ 8,300
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233-West Virginia State Police –

State Police Academy Post Exchange

(WV Code Chapter 15)

Fund 6544 FY 2020 Org 0612

1	Current Expenses	13000	\$ 160,000
2	Repairs and Alterations.....	06400	<u>40,000</u>
3	Total.....		\$ 200,000

*234-Fire Commission –**Fire Marshal Fees*

(WV Code Chapter 29)

Fund 6152 FY 2020 Org 0619

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,480,533
3	Unclassified	09900	3,800
4	Current Expenses	13000	1,249,550
5	Repairs and Alterations.....	06400	58,500
6	Equipment.....	07000	140,800
7	BRIM Premium.....	91300	<u>62,000</u>
8	Total.....		\$ 4,995,183

*235-Division of Justice and Community Services –**WV Community Corrections Fund*

(WV Code Chapter 62)

Fund 6386 FY 2020 Org 0620

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 161,923
3	Unclassified	09900	750
4	Current Expenses	13000	1,846,250
5	Repairs and Alterations.....	06400	<u>1,000</u>
6	Total.....		\$ 2,009,923

*236-Division of Justice and Community Services –**Court Security Fund*

(WV Code Chapter 51)

Fund 6804 FY 2020 Org 0620

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 23,840

3	Current Expenses	13000	<u>1,478,135</u>
4	Total.....		\$ 1,501,975

*237-Division of Justice and Community Services –
Second Chance Driver's License Program Account*

(WV Code Chapter 17B)

Fund 6810 FY 2020 Org 0620

1	Current Expenses	13000	\$ 25,000
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DEPARTMENT OF REVENUE

238-Division of Financial Institutions

(WV Code Chapter 31A)

Fund 3041 FY 2020 Org 0303

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,703,057
3	Current Expenses	13000	614,775
4	Equipment.....	07000	<u>44,200</u>
5	Total.....		\$ 3,362,032

239-Office of the Secretary –

State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2020 Org 0701

1	Directed Transfer	70000	\$ 20,000,000
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2 The above appropriation for Directed Transfer shall be
3 transferred to the Consolidated Public Retirement Board –
4 West Virginia Public Employees Retirement System
5 Employers Accumulation Fund (fund 2510).

*240-Tax Division –**Cemetery Company Account*

(WV Code Chapter 35)

Fund 7071 FY 2020 Org 0702

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 25,928
3	Current Expenses	13000	<u>7,717</u>
4	Total.....		\$ 33,645

*241-Tax Division –**Special Audit and Investigative Unit*

(WV Code Chapter 11)

Fund 7073 FY 2020 Org 0702

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 696,428
3	Unclassified	09900	9,500
4	Current Expenses	13000	273,297
5	Repairs and Alterations.....	06400	7,000
6	Equipment.....	07000	<u>5,000</u>
7	Total.....		\$ 991,225

*242-Tax Division –**Wine Tax Administration Fund*

(WV Code Chapter 60)

Fund 7087 FY 2020 Org 0702

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 268,973
3	Current Expenses	13000	<u>5,406</u>
4	Total.....		\$ 274,379

*243-Tax Division –**Reduced Cigarette Ignition Propensity**Standard and Fire Prevention Act Fund*

(WV Code Chapter 47)

Fund 7092 FY 2020 Org 0702

1	Current Expenses	13000	\$	35,000
2	Equipment.....	07000		<u>15,000</u>
3	Total.....		\$	50,000

*244-Tax Division –**Local Sales Tax and Excise Tax**Administration Fund*

(WV Code Chapter 11)

Fund 7099 FY 2020 Org 0702

1	Personal Services and			
2	Employee Benefits.....	00100	\$	1,543,527
3	Unclassified	09900		10,000
4	Current Expenses	13000		784,563
5	Repairs and Alterations.....	06400		1,000
6	Equipment.....	07000		<u>5,000</u>
7	Total.....		\$	2,344,090

*245-State Budget Office –**Public Employees Insurance Reserve Fund*

(WV Code Chapter 11B)

Fund 7400 FY 2020 Org 0703

1	Public Employees Insurance			
2	Reserve Fund – Transfer	90300	\$	6,800,000

3 The above appropriation for Public Employees
 4 Insurance Reserve Fund – Transfer shall be transferred to
 5 the Medical Services Trust Fund (fund 5185, org 0511) for
 6 expenditure.

246-State Budget Office –

Public Employees Insurance Agency

Financial Stability Fund

(WV Code Chapter 11B)

Fund 7401 FY 2020 Org 0703

1	Retiree Premium Offset	80101	\$ 5,000,000
2	PEIA Reserve.....	80102	<u>10,000,000</u>
3	Total.....		\$ 15,000,000

4 The above appropriation shall be transferred to special
 5 revenue funds to be utilized by the West Virginia Public
 6 Employees Insurance Agency for the purposes of permitting
 7 the PEIA Finance Board to offset \$5 million in retiree
 8 premium increases. Additionally, \$10 million will be put
 9 into a reserve fund to stabilize and preserve the future
 10 solvency of PEIA. Such amount shall not be included in the
 11 calculation of the plan year aggregate premium cost-sharing
 12 percentages between employers and employees.

247-Insurance Commissioner –

Examination Revolving Fund

(WV Code Chapter 33)

Fund 7150 FY 2020 Org 0704

Personal Services and			
Employee Benefits.....	00100	\$	748,764
Current Expenses	13000		1,357,201
Repairs and Alterations.....	06400		3,000
Equipment.....	07000		81,374

Buildings.....	25800	8,289
Other Assets.....	69000	<u>11,426</u>
Total.....		\$ 2,210,054

248-Insurance Commissioner –

Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2020 Org 0704

1 Personal Services and		
2 Employee Benefits.....	00100	\$ 571,976
3 Current Expenses	13000	202,152
4 Repairs and Alterations.....	06400	5,000
5 Equipment.....	07000	34,225
6 Buildings.....	25800	4,865
7 Other Assets.....	69000	<u>19,460</u>
8 Total.....		\$ 837,678

249-Insurance Commissioner –

Insurance Commission Fund

(WV Code Chapter 33)

Fund 7152 FY 2020 Org 0704

1 Personal Services and		
2 Employee Benefits.....	00100	\$ 24,169,021
3 Current Expenses	13000	8,797,758
4 Repairs and Alterations.....	06400	68,614
5 Equipment.....	07000	1,728,240
6 Buildings.....	25800	25,000
7 Other Assets.....	69000	<u>340,661</u>
8 Total.....		\$ 35,129,294

250-Insurance Commissioner –

Workers' Compensation Old Fund

(WV Code Chapter 23)

Fund 7162 FY 2020 Org 0704

1	Employee Benefits.....	01000	\$ 50,000
2	Current Expenses.....	13000	<u>250,500,000</u>
3	Total.....		\$ 250,550,000

251-Insurance Commissioner –

Workers' Compensation Uninsured Employers' Fund

(WV Code Chapter 23)

Fund 7163 FY 2020 Org 0704

1	Current Expenses.....	13000	\$ 15,000,000
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252-Insurance Commissioner –

Self-Insured Employer Guaranty Risk Pool

(WV Code Chapter 23)

Fund 7164 FY 2020 Org 0704

1	Current Expenses.....	13000	\$ 9,000,000
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253-Insurance Commissioner –

Self-Insured Employer Security Risk Pool

(WV Code Chapter 23)

Fund 7165 FY 2020 Org 0704

1	Current Expenses.....	13000	\$ 14,000,000
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254-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2020 Org 0706

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 282,589
3	Current Expenses	13000	144,844
4	Equipment.....	07000	<u>100</u>
5	Total.....		\$ 427,533

255-Racing Commission –

Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2020 Org 0707

1	Medical Expenses – Total.....	24500	\$ 57,000
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2 The total amount of this appropriation shall be paid
3 from the special revenue fund out of collections of license
4 fees and fines as provided by law.

5 No expenditures shall be made from this fund except for
6 hospitalization, medical care and/or funeral expenses for
7 persons contributing to this fund.

256-Racing Commission –

Administration and Promotion Account

(WV Code Chapter 19)

Fund 7304 FY 2020 Org 0707

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 264,564
3	Current Expenses	13000	93,335
4	Other Assets.....	69000	<u>5,000</u>
5	Total.....		\$ 362,899

257-Racing Commission –

General Administration

(WV Code Chapter 19)

Fund 7305 FY 2020 Org 0707

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,352,306
3	Current Expenses	13000	566,248
4	Repairs and Alterations.....	06400	7,000
5	Other Assets.....	69000	<u>50,000</u>
6	Total.....		\$ 2,975,554

258-Racing Commission –

*Administration, Promotion, Education, Capital Improvement
and Greyhound Adoption Programs*

to include Spaying and Neutering Account

(WV Code Chapter 19)

Fund 7307 FY 2020 Org 0707

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 918,781
3	Current Expenses	13000	214,406
4	Other Assets.....	69000	<u>200,000</u>
5	Total.....		\$ 1,333,187

259-Alcohol Beverage Control Administration –

Wine License Special Fund

(WV Code Chapter 60)

Fund 7351 FY 2020 Org 0708

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 132,213
3	Current Expenses	13000	69,186
4	Repairs and Alterations.....	06400	7,263
5	Equipment.....	07000	10,000
6	Buildings.....	25800	100,000
7	Other Assets.....	69000	<u>100</u>
8	Total.....		\$ 318,762

9 To the extent permitted by law, four classified exempt
 10 positions shall be provided from Personal Services and
 11 Employee Benefits appropriation for field auditors.

260-Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2020 Org 0708

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 5,790,574
3	Current Expenses	13000	2,890,577
4	Repairs and Alterations.....	06400	91,000
5	Equipment.....	07000	108,000
6	Buildings.....	25800	375,100
7	Purchase of Supplies for Resale.....	41900	72,500,000
8	Transfer Liquor Profits and Taxes ...	42500	20,800,000
9	Other Assets.....	69000	125,100
10	Land.....	73000	<u>100</u>
11	Total.....		\$102,680,451

12 The total amount of these appropriations shall be paid
 13 from a special revenue fund out of liquor revenues and any
 14 other revenues available.

15 The above appropriations include the salary of the
 16 commissioner and the salaries, expenses and equipment of
 17 administrative offices, warehouses and inspectors.

18 The above appropriations include funding for the
 19 Tobacco/Alcohol Education Program.

20 There is hereby appropriated from liquor revenues, in
 21 addition to the above appropriations as needed, the
 22 necessary amount for the purchase of liquor as provided by
 23 law and the remittance of profits and taxes to the General
 24 Revenue Fund.

261-State Athletic Commission Fund

(WV Code Chapter 29)

Fund 7009 FY 2020 Org 0933

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,900
3	Current Expenses	13000	<u>37,100</u>
4	Total.....		\$ 40,000

DEPARTMENT OF TRANSPORTATION*262-Division of Motor Vehicles –**Dealer Recovery Fund*

(WV Code Chapter 17)

Fund 8220 FY 2020 Org 0802

1	Current Expenses	13000	\$ 189,000
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*263-Division of Motor Vehicles –**Motor Vehicle Fees Fund*

(WV Code Chapter 17B)

Fund 8223 FY 2020 Org 0802

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,733,074
3	Current Expenses	13000	4,362,975
4	Repairs and Alterations.....	06400	16,000
5	Equipment.....	07000	75,000
6	Other Assets.....	69000	10,000
7	BRIM Premium.....	91300	<u>84,737</u>
8	Total.....		\$ 8,281,786

*264-Division of Highways –**A. James Manchin Fund*

(WV Code Chapter 22)

Fund 8319 FY 2020 Org 0803

1	Current Expenses.....	13000	\$ 1,650,000
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265-State Rail Authority –

West Virginia Commuter Rail Access Fund

(WV Code Chapter 29)

Fund 8402 FY 2020 Org 0804

1	Current Expenses.....	13000	\$ 1,100,000
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DEPARTMENT OF VETERANS' ASSISTANCE

266-Veterans' Facilities Support Fund

(WV Code Chapter 9A)

Fund 6703 FY 2020 Org 0613

1	Current Expenses.....	13000	\$ 1,654,234
2	Other Assets.....	69000	10,000
3	Total.....		\$ 1,664,234

267-Department of Veterans' Assistance –

WV Veterans' Home –

Special Revenue Operating Fund

(WV Code Chapter 9A)

Fund 6754 FY 2020 Org 0618

1	Current Expenses.....	13000	\$ 700,000
2	Repairs and Alterations.....	06400	50,000
3	Total.....		\$ 750,000

BUREAU OF SENIOR SERVICES

268-Bureau of Senior Services –

Community Based Service Fund

(WV Code Chapter 22)

Fund 5409 FY 2020 Org 0508

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 160,883
3	Current Expenses	13000	<u>10,348,710</u>
4	Total.....		\$ 10,509,593

5 The total amount of these appropriations are funded
6 from annual table game license fees to enable the aged and
7 disabled citizens of West Virginia to stay in their homes
8 through the provision of home and community-based
9 services.

HIGHER EDUCATION POLICY COMMISSION*269-Higher Education Policy Commission –**System –**Tuition Fee Capital Improvement Fund**(Capital Improvement and Bond Retirement Fund)**Control Account*

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2020 Org 0442

1	Debt Service.....	04000	\$ 27,713,123
2	General Capital Expenditures	30600	5,000,000
3	Facilities Planning		
4	and Administration	38600	<u>441,111</u>
5	Total.....		\$ 33,154,234

6 The total amount of these appropriations shall be paid
7 from the Special Capital Improvement Fund created in
8 W.Va. Code §18B-10-8. Projects are to be paid on a cash
9 basis and made available on July 1.

10 The above appropriations, except for Debt Service, may
11 be transferred to special revenue funds for capital
12 improvement projects at the institutions.

270-Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2020 Org 0442

1 Any unexpended balance remaining in the
2 appropriation for Capital Outlay (fund 4906, appropriation
3 51100) at the close of the fiscal year 2019 is hereby
4 reappropriated for expenditure during the fiscal year 2020.

5 The appropriation shall be paid from available
6 unexpended cash balances and interest earnings accruing to
7 the fund. The appropriation shall be expended at the
8 discretion of the Higher Education Policy Commission and
9 the funds may be allocated to any institution within the
10 system.

11 The total amount of this appropriation shall be paid
12 from the unexpended proceeds of revenue bonds previously
13 issued pursuant to W.Va. Code §18-12B-8, which have
14 since been refunded.

271-Community and Technical College –

Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2020 Org 0442

1 Any unexpended balance remaining in the
2 appropriation for Capital Improvements – Total (fund 4908,
3 appropriation 95800) at the close of fiscal year 2019 is
4 hereby reappropriated for expenditure during the fiscal year
5 2020.

6 The total amount of this appropriation shall be paid
 7 from the sale of the Series 2017 Community and Technical
 8 College Capital Improvement Refunding Revenue Bonds
 9 and anticipated interest earnings.

272-West Virginia University –

West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2020 Org 0463

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 10,764,347
3	Current Expenses	13000	4,524,300
4	Repairs and Alterations.....	06400	425,000
5	Equipment.....	07000	512,000
6	Buildings.....	25800	150,000
7	Other Assets.....	69000	<u>50,000</u>
8	Total.....		\$ 16,425,647

MISCELLANEOUS BOARDS AND COMMISSIONS

273-Board of Barbers and Cosmetologists –

Barbers and Beauticians Special Fund

(WV Code Chapters 16 and 30)

Fund 5425 FY 2020 Org 0505

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 543,993
3	Current Expenses	13000	<u>239,969</u>
4	Total.....		\$ 783,962

5 The total amount of these appropriations shall be paid
 6 from a special revenue fund out of collections made by
 7 the Board of Barbers and Cosmetologists as provided by
 8 law.

*274-Hospital Finance Authority –**Hospital Finance Authority Fund*

(WV Code Chapter 16)

Fund 5475 FY 2020 Org 0509

1	Personal Services and			
2	Employee Benefits.....	00100	\$	93,261
3	Unclassified	09900		1,450
4	Current Expenses	13000		<u>55,397</u>
5	Total.....		\$	150,108

6 The total amount of these appropriations shall be paid
7 from the special revenue fund out of fees and collections as
8 provided by Article 29A, Chapter 16 of the Code.

*275-WV State Board of Examiners for**Licensed Practical Nurses –**Licensed Practical Nurses*

(WV Code Chapter 30)

Fund 8517 FY 2020 Org 0906

1	Personal Services and			
2	Employee Benefits.....	00100	\$	495,505
3	Current Expenses	13000		<u>107,700</u>
4	Total.....		\$	603,205

*276-WV Board of Examiners for**Registered Professional Nurses –**Registered Professional Nurses*

(WV Code Chapter 30)

Fund 8520 FY 2020 Org 0907

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,300,612
3	Current Expenses	13000	312,655
4	Repairs and Alterations.....	06400	3,000
5	Equipment.....	07000	25,000
6	Other Assets.....	69000	<u>4,500</u>
7	Total.....		\$ 1,645,767

277-Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2020 Org 0926

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 12,481,921
3	Unclassified	09900	147,643
4	Current Expenses	13000	2,572,202
5	Repairs and Alterations.....	06400	55,000
6	Equipment.....	07000	160,000
7	Buildings.....	25800	10
8	PSC Weight Enforcement.....	34500	4,605,652
9	Debt Payment/Capital Outlay	52000	350,000
10	Land.....	73000	10
11	BRIM Premium.....	91300	<u>172,216</u>
12	Total.....		\$ 20,544,654

13 The total amount of these appropriations shall be paid
14 from a special revenue fund out of collections for special
15 license fees from public service corporations as provided by
16 law.

17 The Public Service Commission is authorized to
18 transfer up to \$500,000 from this fund to meet the expected
19 deficiencies in the Motor Carrier Division (fund 8625, org
20 0926) due to the amendment and reenactment of W.Va.
21 Code §24A-3-1 by Enrolled House Bill Number 2715,
22 Regular Session, 1997.

*278-Public Service Commission –**Gas Pipeline Division –**Public Service Commission Pipeline Safety Fund*

(WV Code Chapter 24B)

Fund 8624 FY 2020 Org 0926

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 294,658
3	Unclassified	09900	3,851
4	Current Expenses	13000	93,115
5	Repairs and Alterations.....	06400	<u>4,000</u>
6	Total.....		\$ 395,624

7 The total amount of these appropriations shall be paid
8 from a special revenue fund out of receipts collected for or
9 by the Public Service Commission pursuant to and in the
10 exercise of regulatory authority over pipeline companies as
11 provided by law.

*279-Public Service Commission –**Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8625 FY 2020 Org 0926

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,377,514
3	Unclassified	09900	29,233
4	Current Expenses	13000	577,557
5	Repairs and Alterations.....	06400	23,000
6	Equipment.....	07000	<u>50,000</u>
7	Total.....		\$ 3,057,304

8 The total amount of these appropriations shall be paid
 9 from a special revenue fund out of receipts collected for or
 10 by the Public Service Commission pursuant to and in the
 11 exercise of regulatory authority over motor carriers as
 12 provided by law.

280-Public Service Commission –

Consumer Advocate Fund

(WV Code Chapter 24)

Fund 8627 FY 2020 Org 0926

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 772,994
3	Current Expenses	13000	276,472
4	Equipment.....	07000	9,872
5	BRIM Premium.....	91300	<u>4,660</u>
6	Total.....		\$ 1,063,998

7 The total amount of these appropriations shall be
 8 supported by cash from a special revenue fund out of
 9 collections made by the Public Service Commission.

281-Real Estate Commission –

Real Estate License Fund

(WV Code Chapter 30)

Fund 8635 FY 2020 Org 0927

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 607,098
3	Current Expenses	13000	293,122
4	Repairs and Alterations.....	06400	2,500
5	Equipment.....	07000	<u>5,000</u>
6	Total.....		\$ 907,720

7 The total amount of these appropriations shall be paid
 8 out of collections of license fees as provided by law.

*282-WV Board of Examiners for Speech-Language**Pathology and Audiology –**Speech-Language Pathology and Audiology Operating Fund*

(WV Code Chapter 30)

Fund 8646 FY 2020 Org 0930

1	Personal Services and			
2	Employee Benefits.....	00100	\$	80,251
3	Current Expenses	13000		<u>63,499</u>
4	Total.....		\$	143,750

*283-WV Board of Respiratory Care –**Board of Respiratory Care Fund*

(WV Code Chapter 30)

Fund 8676 FY 2020 Org 0935

1	Personal Services and			
2	Employee Benefits.....	00100	\$	95,160
3	Current Expenses	13000		53,027
4	Repairs and Alterations.....	06400		<u>400</u>
5	Total.....		\$	148,587

*284-WV Board of Licensed Dietitians –**Dietitians Licensure Board Fund*

(WV Code Chapter 30)

Fund 8680 FY 2020 Org 0936

1	Personal Services and			
2	Employee Benefits.....	00100	\$	20,219
3	Current Expenses	13000		<u>20,250</u>
4	Total.....		\$	40,469

*285-Massage Therapy Licensure Board –**Massage Therapist Board Fund*

(WV Code Chapter 30)

Fund 8671 FY 2020 Org 0938

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 109,355
3	Current Expenses	13000	<u>42,648</u>
4	Total.....		\$ 152,003

*286-Board of Medicine –**Medical Licensing Board Fund*

(WV Code Chapter 30)

Fund 9070 FY 2020 Org 0945

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,378,807
3	Current Expenses	13000	1,108,789
4	Repairs and Alterations.....	06400	<u>8,000</u>
5	Total.....		\$ 2,495,596

*287-West Virginia Enterprise Resource Planning Board –**Enterprise Resource Planning System Fund*

(WV Code Chapter 12)

Fund 9080 FY 2020 Org 0947

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 6,856,239
3	Unclassified	09900	232,000
4	Current Expenses	13000	15,640,134
5	Repairs and Alterations.....	06400	300
6	Equipment.....	07000	2,213,000
7	Buildings.....	25800	2,000

8	Other Assets.....	69000	<u>199,500</u>
9	Total.....		\$ 25,143,173

288-Board of Treasury Investments –

Board of Treasury Investments Fee Fund

(WV Code Chapter 12)

Fund 9152 FY 2020 Org 0950

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 782,889
3	Unclassified	09900	14,850
4	Current Expenses	13000	650,714
5	BRIM Premium.....	91300	36,547
6	Fees of Custodians, Fund Advisors		
7	and Fund Managers	93800	<u>3,500,000</u>
8	Total.....		\$ 4,985,000

9 There is hereby appropriated from this fund, in addition
 10 to the above appropriation if needed, an amount of funds
 11 necessary for the Board of Treasury Investments to pay the
 12 fees and expenses of custodians, fund advisors and fund
 13 managers for the consolidated fund of the State as provided
 14 in Article 6C, Chapter 12 of the Code.

15 The total amount of these appropriations shall be paid
 16 from the special revenue fund out of fees and collections as
 17 provided by law.

18	Total TITLE II, Section 3 – Other Funds		
19	(Including claims		
20	against the state).....		<u>\$ 1,525,022,363</u>

1 **Sec. 4. Appropriations from lottery net profits.** —
 2 Net profits of the lottery are to be deposited by the Director
 3 of the Lottery to the following accounts in the amounts
 4 indicated. The Director of the Lottery shall prorate each
 5 deposit of net profits in the proportion the appropriation for

6 each account bears to the total of the appropriations for all
 7 accounts.

8 After first satisfying the requirements for Fund 2252,
 9 Fund 3963, and Fund 4908 pursuant to W.Va. Code §29-22-
 10 18, the Director of the Lottery shall make available from the
 11 remaining net profits of the lottery any amounts needed to
 12 pay debt service for which an appropriation is made for
 13 Fund 9065, Fund 4297, Fund 3390, Fund 3514, Fund 9067,
 14 and Fund 9068 and is authorized to transfer any such
 15 amounts to Fund 9065, Fund 4297, Fund 3390, Fund 3514,
 16 Fund 9067, and Fund 9068 for that purpose. Upon receipt
 17 of reimbursement of amounts so transferred, the Director of
 18 the Lottery shall deposit the reimbursement amounts to the
 19 following accounts as required by this section.

289-Education, Arts, Sciences and Tourism –

Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2020 Org 0211

	Appropriation	Lottery Funds
1 Debt Service – Total.....	31000	\$ 10,000,000

290-West Virginia Development Office –

West Virginia Tourism Office

(WV Code Chapter 5B)

Fund 3067 FY 2020 Org 0304

1 Tourism – Telemarketing Center...	46300	\$ 82,080
2 Tourism – Advertising (R).....	61800	2,422,407
3 Tourism – Operations (R).....	66200	<u>4,227,938</u>
4 Total.....		\$ 6,732,425

5 Any unexpended balances remaining in the
 6 appropriations for Tourism – Advertising (fund 3067,
 7 appropriation 61800), and Tourism – Operations (fund
 8 3067, appropriation 66200) at the close of the fiscal year
 9 2019 are hereby reappropriated for expenditure during the
 10 fiscal year 2020.

291-Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2020 Org 0310

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,428,178
3	Current Expenses	13000	26,900
4	Pricketts Fort State Park	32400	106,560
5	Non-Game Wildlife (R).....	52700	386,935
6	State Parks and		
7	Recreation Advertising (R).....	61900	<u>494,578</u>
8	Total.....		\$ 3,443,151

9 Any unexpended balances remaining in the
 10 appropriations for Unclassified (fund 3267, appropriation
 11 09900), Capital Outlay – Parks (fund 3267, appropriation
 12 28800), Non-Game Wildlife (fund 3267, appropriation
 13 52700), and State Parks and Recreation Advertising (fund
 14 3267, appropriation 61900) at the close of the fiscal year
 15 2019 are hereby reappropriated for expenditure during the
 16 fiscal year 2020.

292-State Board of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2020 Org 0402

1	FBI Checks	37200	\$ 116,548
2	Vocational Education		
3	Equipment Replacement.....	39300	800,000
4	Assessment Program (R)	39600	3,016,444

5	Literacy Project.....	89900	350,000
6	21st Century Technology Infrastructure		
7	Network Tools and Support (R).....	93300	<u>14,600,383</u>
8	Total.....		\$ 18,883,375

9 Any unexpended balances remaining in the
 10 appropriations for Unclassified (fund 3951, appropriation
 11 09900), Current Expenses (fund 3951, appropriation
 12 13000), Assessment Program (fund 3951, appropriation
 13 39600), and 21st Century Technology Infrastructure
 14 Network Tools and Support (fund 3951, appropriation
 15 93300) at the close of the fiscal year 2019 are hereby
 16 reappropriated for expenditure during the fiscal year 2020.

293-State Department of Education –

School Building Authority –

Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2020 Org 0402

1	Debt Service – Total	31000	\$ 15,320,363
2	Directed Transfer	70000	<u>2,679,637</u>
3	Total.....		\$ 18,000,000

4 The School Building Authority shall have the authority
 5 to transfer between the above appropriations in accordance
 6 with W.Va. Code §29-22-18.

294-Division of Culture and History –

Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2020 Org 0432

1	Huntington Symphony.....	02700	\$ 59,058
2	Preservation WV (R)	09200	491,921

3	Fairs and Festivals (R)	12200	1,346,814
4	Commission for National and		
5	Community Service	19300	374,980
6	Archeological Curation/		
7	Capital Improvements (R)	24600	36,276
8	Historic Preservation Grants (R)....	31100	368,428
9	West Virginia Public Theater	31200	120,019
10	Greenbrier Valley Theater	42300	115,000
11	Theater Arts of West Virginia	46400	90,000
12	Marshall Artists Series.....	51800	36,005
13	Grants for Competitive		
14	Arts Program (R)	62400	726,000
15	West Virginia State Fair	65700	31,241
16	Save the Music.....	68000	24,000
17	Contemporary American		
18	Theater Festival	81100	57,281
19	Independence Hall	81200	27,277
20	Mountain State Forest Festival	86400	38,187
21	WV Symphony	90700	59,058
22	Wheeling Symphony.....	90800	59,058
23	Appalachian Children's Chorus.....	91600	<u>54,554</u>
24	Total.....		\$ 4,115,157

25 From the above appropriation for Preservation West
26 Virginia (fund 3534, appropriation 09200) funding shall be
27 provided to the African-American Heritage Family Tree
28 Museum (Fayette) \$2,673, Aracoma Story (Logan)
29 \$29,703, Arts Monongahela (Monongalia) \$11,881,
30 Barbour County Arts and Humanities Council \$891,
31 Beckley Main Street (Raleigh) \$2,970, Buffalo Creek
32 Memorial (Logan) \$2,970, Carnegie Hall (Greenbrier)
33 \$46,899, Ceredo Historical Society (Wayne) \$1,188,
34 Ceredo Kenova Railroad Museum (Wayne) \$1,188, Ceredo
35 Museum (Wayne) \$720, Children's Theatre of Charleston
36 (Kanawha) \$3,127, Chuck Mathena Center (Mercer)
37 \$62,532, Collis P. Huntington Railroad Historical Society
38 (Cabell) \$5,941, Country Music Hall of Fame and Museum
39 (Marion) \$4,159, First Stage Children's Theater Company
40 \$1,188, Flannigan Murrell House (Summers) \$3,781, Fort

41 Ashby Fort (Mineral) \$891, Fort New Salem (Harrison)
42 \$2,198, Fort Randolph (Mason) \$2,970, General Adam
43 Stephen Memorial Foundation (Berkeley) \$11,006, Grafton
44 Mother's Day Shrine Committee (Taylor) \$5,049, Hardy
45 County Tour and Crafts Association \$11,881, Heartwood
46 in the Hills (Calhoun) \$5,040, Heritage Farm Museum &
47 Village (Cabell) \$29,703, Historic Fayette Theater
48 (Fayette) \$3,267, Historic Middleway Conservancy
49 (Jefferson) \$594, Jefferson County Black History
50 Preservation Society \$2,970, Jefferson County Historical
51 Landmark Commission \$4,753, Maddie Carroll House
52 (Cabell) \$4,455, Marshall County Historical Society
53 \$5,049, McCoy Theater (Hardy) \$11,881, Morgantown
54 Theater Company (Monongalia) \$11,881, Mountaineer
55 Boys' State (Lewis) \$5,941, Nicholas Old Main Foundation
56 (Nicholas) \$1,188, Norman Dillon Farm Museum
57 (Berkeley) \$5,941, Old Opera House Theater Company
58 (Jefferson) \$8,911, Parkersburg Arts Center (Wood)
59 \$11,881, Pocahontas Historic Opera House \$3,564, Raleigh
60 County All Wars Museum \$5,941, Rhododendron Girl's
61 State (Ohio) \$5,941, Roane County 4-H and FFA Youth
62 Livestock Program \$2,970, Scottish Heritage Society/N.
63 Central WV (Harrison) \$2,970, Society for the Preservation
64 of McGrew House (Preston) \$2,079, Southern West
65 Virginia Veterans' Museum \$3,393, Summers County
66 Historic Landmark Commission \$2,970, Those Who
67 Served War Museum (Mercer) \$2,376, Three Rivers Avian
68 Center (Summers) \$5,311, Tug Valley Arts Council
69 (Mingo) \$2,970, Tug Valley Chamber of Commerce Coal
70 House (Mingo) \$1,188, Tunnelton Historical Society
71 (Preston) \$1,188, Veterans Committee for Civic
72 Improvement of Huntington (Wayne) \$2,970, West
73 Virginia Museum of Glass (Lewis) \$2,970, West Virginia
74 Music Hall of Fame (Kanawha) \$20,792, YMCA Camp
75 Horseshoe (Tucker) \$59,406, Youth Museum of Southern
76 West Virginia (Raleigh) \$7,129, Z.D. Ramsdell House
77 (Wayne) \$720.

78 From the above appropriation for Fairs and Festivals
79 (fund 3534, appropriation 12200) funding shall be provided
80 to the A Princeton 4th (Mercer) \$1,800, African-American
81 Cultural Heritage Festival (Jefferson) \$2,970, Alderson 4th
82 of July Celebration (Greenbrier) \$2,970, Allegheny Echo
83 (Pocahontas) \$4,456, Alpine Festival/Leaf Peepers Festival
84 (Tucker) \$6,683, American Civil War (Grant) \$3,127,
85 American Legion Post 8 Veterans Day Parade (McDowell)
86 \$1,250, Angus Beef and Cattle Show (Lewis) \$891, Annual
87 Birch River Days (Nicholas) \$1,296, Annual Don Redman
88 Heritage Concert & Awards (Jefferson) \$938, Annual
89 Ruddle Park Jamboree (Pendleton) \$4,690, Antique Market
90 Fair (Lewis) \$1,188, Apollo Theater-Summer Program
91 (Berkeley) \$1,188, Apple Butter Festival (Morgan) \$3,564,
92 Arkansaw Homemaker's Heritage Weekend (Hardy)
93 \$2,079, Armed Forces Day-South Charleston (Kanawha)
94 \$1,782, Arthurdale Heritage New Deal Festival (Preston)
95 \$2,970, Athens Town Fair (Mercer) \$1,188, Augusta Fair
96 (Randolph) \$2,970, Autumn Harvest Fest (Monroe)
97 \$2,448, Barbour County Fair \$14,851, Barboursville
98 Octoberfest (Cabell) \$2,970, Bass Festival (Pleasants)
99 \$1,099, Battelle District Fair (Monongalia) \$2,970, Battle
100 of Dry Creek (Greenbrier) \$891, Battle of Point Pleasant
101 Memorial Committee (Mason) \$2,970, Belle Town Fair
102 (Kanawha) \$2,673, Belleville Homecoming (Wood)
103 \$11,881, Bergoo Down Home Days (Webster) \$1,485,
104 Berkeley County Youth Fair \$10,990, Black Bear 4K
105 Mountain Bike Race (Kanawha) \$684, Black Heritage
106 Festival (Harrison) \$3,564, Black Walnut Festival (Roane)
107 \$5,940, Blast from the Past (Upshur) \$1,440, Blue-Gray
108 Reunion (Barbour) \$2,079, Boone County Fair \$5,940,
109 Boone County Labor Day Celebration \$2,376, Bradshaw
110 Fall Festival (McDowell) \$1,188, Brandonville Heritage
111 Day (Preston) \$1,048, Braxton County Fair \$6,832,
112 Braxton County Monster Fest / West Virginia Autumn
113 Festival \$1,485, Brooke County Fair \$2,079, Bruceton
114 Mills Good Neighbor Days (Preston) \$1,188, Buckwheat
115 Festival (Preston) \$5,050, Buffalo 4th of July Celebration
116 (Putnam) \$400, Buffalo October Fest (Putnam) \$3,240,

117 Burlington Apple Harvest Festival (Mineral) \$17,821,
118 Burlington Pumpkin Harvest Festival (Raleigh) \$2,970,
119 Burnsville Harvest Festival (Braxton) \$1,407, Cabell
120 County Fair \$5,940, Calhoun County Wood Festival
121 \$1,188, Campbell's Creek Community Fair (Kanawha)
122 \$1,485, Cape Coalwood Festival Association (McDowell)
123 \$1,485, Capon Bridge Founders Day Festival (Hampshire)
124 \$1,188, Capon Springs Ruritan 4th of July (Hampshire)
125 \$684, Cass Homecoming (Pocahontas) \$1,188, Cedarville
126 Town Festival (Gilmer) \$684, Celebration in the Park
127 (Wood) \$2,376, Celebration of America (Monongalia)
128 \$3,564, Ceredo Freedom Festival (Wayne) \$700,
129 Chapmanville Apple Butter Festival (Logan) \$684,
130 Chapmanville Fire Department 4th of July (Logan) \$1,782,
131 Charles Town Christmas Festival (Jefferson) \$2,970,
132 Charles Town Heritage Festival (Jefferson) \$2,970, Cherry
133 River Festival (Nicholas) \$3,861, Chester Fireworks
134 (Hancock) \$891, Chester 4th of July Festivities (Hancock)
135 \$2,970, Chief Logan State Park-Civil War Celebration
136 (Logan) \$4,752, Chilifest West Virginia State Chili
137 Championship (Cabell) \$1,563, Christmas In Our Town
138 (Marion) \$3,127, Christmas in Shepherdstown (Jefferson)
139 \$2,376, Christmas in the Park (Brooke) \$2,970, Christmas
140 in the Park (Logan) \$14,851, City of Dunbar Critter Dinner
141 (Kanawha) \$5,940, City of Logan Polar Express (Logan)
142 \$4,456, City of New Martinsville Festival of Memories
143 (Wetzel) \$6,534, Clay County Golden Delicious Apple
144 Festival \$4,158, Clay District Fair (Monongalia) \$1,080,
145 Coal Field Jamboree (Logan) \$20,792, Coalton Days Fair
146 (Randolph) \$4,158, Country Roads Festival (Fayette)
147 \$1,188, Cowen Railroad Festival (Webster) \$2,079,
148 Craigsville Fall Festival (Nicholas) \$2,079, Cruise into
149 Princeton (Mercer) \$2,160, Culturefest World Music & Arts
150 Festival (Mercer) \$4,690, Delbarton Homecoming (Mingo)
151 \$2,079, Doddridge County Fair \$4,158, Dorcas Ice Cream
152 Social (Grant) \$3,564, Durbin Days (Pocahontas) \$2,970,
153 Elbert/Filbert Reunion Festival (McDowell) \$891, Elkins
154 Randolph County 4th of July Car Show (Randolph) \$1,188,
155 Fairview 4th of July Celebration (Marion) \$684, Farm

156 Safety Day (Preston) \$1,188, Farmer's Day Festival
157 (Monroe) \$2,330, Farmers' Day Parade (Wyoming) \$720,
158 Fenwick Mountain Old Time Community Festival
159 (Nicholas) \$2,880, FestivALL Charleston (Kanawha)
160 \$11,881, Flatwoods Days (Braxton) \$700, Flemington Day
161 Fair and Festival (Taylor) \$2,079, Follansbee Community
162 Days (Brooke) \$4,900, Fort Gay Mountain Heritage Days
163 (Wayne) \$2,970, Fort Henry Days (Ohio) \$3,148, Fort
164 Henry Living History (Ohio) \$1,563, Fort New Salem
165 Spirit of Christmas Festival (Harrison) \$2,432, Frankford
166 Autumnfest (Greenbrier) \$2,970, Franklin Fishing Derby
167 (Pendleton) \$4,456, Freshwater Folk Festival (Greenbrier)
168 \$2,970, Friends Auxiliary of W.R. Sharpe Hospital (Lewis)
169 \$2,970, Frontier Days (Harrison) \$1,782, Frontier
170 Fest/Canaan Valley (Taylor) \$1,500, Fund for the Arts-
171 Wine & All that Jazz Festival (Kanawha) \$1,485,
172 Gassaway Days Celebration (Braxton) \$2,970, Gilbert
173 Elementary Fall Blast (Mingo) \$2,188, Gilbert Kiwanis
174 Harvest Festival (Mingo) \$2,376, Gilbert Spring Fling
175 (Mingo) \$3,595, Gilmer County Farm Show \$2,376, Grant
176 County Arts Council \$1,188, Grape Stomping Wine
177 Festival (Nicholas) \$1,188, Great Greenbrier River Race
178 (Pocahontas) \$5,940, Greater Quinwood Days (Greenbrier)
179 \$781, Guyandotte Civil War Days (Cabell) \$5,941, Hamlin
180 4th of July Celebration (Lincoln) \$2,970, Hampshire Civil
181 War Celebration Days (Hampshire) \$684, Hampshire
182 County 4th of July Celebration \$11,881, Hampshire County
183 Fair \$5,002, Hampshire Heritage Days (Hampshire)
184 \$2,376, Hancock County Oldtime Fair \$2,970, Hardy
185 County Commission - 4th of July \$5,940, Hatfield McCoy
186 Matewan Reunion Festival (Mingo) \$12,330, Hatfield
187 McCoy Trail National ATV and Dirt Bike Weekend
188 (Wyoming) \$2,970, Heat'n the Hills Chilifest (Lincoln)
189 \$2,970, Heritage Craft Festival (Monroe) \$1,044, Heritage
190 Days Festival (Roane) \$891, Hilltop Festival (Cabell)
191 \$684, Hilltop Festival of Lights (McDowell) \$1,188,
192 Hinton Railroad Days (Summers) \$4,347, Holly River
193 Festival (Webster) \$891, Hometown Mountain Heritage
194 Festival (Fayette) \$2,432, Hundred 4th of July (Wetzel)

195 \$4,307, Hundred American Legion Earl Kiger Post
196 Bluegrass Festival (Wetzel) \$1,188, Hurricane 4th of July
197 Celebration (Putnam) \$2,970, Iaeger Town Fair
198 (McDowell) \$891, Irish Heritage Festival of West Virginia
199 (Raleigh) \$2,970, Irish Spring Festival (Lewis) \$684,
200 Italian Heritage Festival-Clarksburg (Harrison) \$17,821,
201 Jackson County Fair \$2,970, Jamboree (Pocahontas)
202 \$2,970, Jane Lew Arts and Crafts Fair (Lewis) \$684,
203 Jefferson County Fair Association \$14,851, Jersey
204 Mountain Ruritan Pioneer Days (Hampshire) \$684, John
205 Henry Days Festival (Monroe) \$4,698, Johnnie Johnson
206 Blues and Jazz Festival (Marion) \$2,970, Johnstown
207 Community Fair (Harrison) \$1,485, Junior Heifer Preview
208 Show (Lewis) \$1,188, Kanawha Coal Riverfest-St. Albans
209 4th of July Festival (Kanawha) \$2,970, Keeper of the
210 Mountains-Kayford (Kanawha) \$1,485, Kenova Autumn
211 Festival (Wayne) \$4,377, Kermit Fall Festival (Mingo)
212 \$1,782, Keystone Reunion Gala (McDowell) \$1,563, King
213 Coal Festival (Mingo) \$2,970, Kingwood Downtown Street
214 Fair and Heritage Days (Preston) \$1,188, L.Z. Rainelle
215 West Virginia Veterans Reunion (Greenbrier) \$2,970, Lady
216 of Agriculture (Preston) \$684, Larry Joe Harless Center
217 Oktoberfest Hatfield McCoy Trail (Mingo) \$5,940, Larry
218 Joe Harless Community Center Spring Middle School Event
219 (Mingo) \$2,970, Last Blast of Summer (McDowell)
220 \$2,970, Lewis County Fair Association \$2,079, Lewisburg
221 Shanghai (Greenbrier) \$1,188, Lincoln County Fall
222 Festival \$4,752, Lincoln County Winterfest \$2,970,
223 Lindside Veterans' Day Parade (Monroe) \$720, Little
224 Levels Heritage Festival (Pocahontas) \$1,188, Lost Creek
225 Community Festival (Harrison) \$4,158, Main Street Arts
226 Festival (Upshur) \$3,127, Main Street Martinsburg
227 Chocolate Fest and Book Fair (Berkeley) \$2,813,
228 Mannington District Fair (Marion) \$3,564, Maple Syrup
229 Festival (Randolph) \$684, Marion County FFA Farm Fest
230 \$1,485, Marmet Labor Day Celebration (Kanawha) \$3,078,
231 Marshall County Antique Power Show \$1,485, Marshall
232 County Fair \$4,456, Mason County Fair \$2,970, Mason
233 Dixon Festival (Monongalia) \$4,158, Matewan Massacre

234 Reenactment (Mingo) \$5,004, Matewan-Magnolia Fair
235 (Mingo) \$15,932, McARTS-McDowell County \$11,881,
236 McDowell County Fair \$1,485, McGrew House History
237 Day (Preston) \$1,188, McNeill's Rangers (Mineral)
238 \$4,752, Meadow Bridge Hometown Festival (Fayette)
239 \$743, Meadow River Days Festival (Greenbrier) \$1,782,
240 Mercer Bluestone Valley Fair (Mercer) \$1,188, Mercer
241 County Fair \$1,188, Mercer County Heritage Festival
242 \$3,474, Mid Ohio Valley Antique Engine Festival (Wood)
243 \$1,782, Milton Christmas in the Park (Cabell) \$1,485,
244 Milton 4th of July Celebration (Cabell) \$1,485, Mineral
245 County Fair \$1,040, Mineral County Veterans Day Parade
246 \$891, Molasses Festival (Calhoun) \$1,188, Monongahfest
247 (Marion) \$3,752, Moon Over Mountwood Fishing Festival
248 (Wood) \$1,782, Morgan County Fair-History Wagon
249 \$891, Moundsville Bass Festival (Marshall) \$2,376,
250 Moundsville July 4th Celebration (Marshall) \$2,970,
251 Mount Liberty Fall Festival (Barbour) \$1,485, Mountain
252 Fest (Monongalia) \$11,881, Mountain Festival (Mercer)
253 \$2,747, Mountain Heritage Arts and Crafts Festival
254 (Jefferson) \$2,970, Mountain Music Festival (McDowell)
255 \$1,485, Mountain State Apple Harvest Festival (Berkeley)
256 \$4,456, Mountain State Arts & Crafts Fair Cedar Lakes
257 (Jackson) \$26,732, Mountaineer Hot Air Balloon Festival
258 (Monongalia) \$2,376, Mullens Dogwood Festival
259 (Wyoming) \$4,158, Multi-Cultural Festival of West
260 Virginia (Kanawha) \$11,881, Music and Barbecue - Banks
261 District VFD (Upshur) \$1,278, New Cumberland Christmas
262 Parade (Hancock) \$1,782, New Cumberland 4th of July
263 (Hancock) \$2,970, New River Bridge Day Festival
264 (Fayette) \$23,762, Newburg Volunteer Fireman's Field
265 Day (Preston) \$684, Nicholas County Fair \$2,970,
266 Nicholas County Potato Festival \$2,079, Oak Leaf Festival
267 (Fayette) \$6,253, Oceana Heritage Festival (Wyoming)
268 \$3,564, Oglebay City Park - Festival of Lights (Ohio)
269 \$47,524, Oglebay Festival (Ohio) \$5,940, Ohio County
270 Country Fair \$5,346, Ohio River Fest (Jackson) \$4,320,
271 Ohio Valley Beef Association (Wood) \$1,485, Ohio Valley
272 Black Heritage Festival (Ohio) \$3,267, Old Central City

273 Fair (Cabell) \$2,970, Old Century City Fair (Barbour)
274 \$1,250, Old Tyme Christmas (Jefferson) \$1,425, Paden
275 City Labor Day Festival (Wetzel) \$3,861, Parkersburg
276 Homecoming (Wood) \$8,754, Patty Fest (Monongalia)
277 \$1,188, Paw Paw District Fair (Marion) \$2,079, Pax
278 Reunion Committee (Fayette) \$2,970, Pendleton County 4-
279 H Weekend \$1,188, Pendleton County Committee for Arts
280 \$8,910, Pendleton County Fair \$6,253, Pennsboro Country
281 Road Festival (Ritchie) \$1,188, Petersburg 4th of July
282 Celebration (Grant) \$11,881, Petersburg HS Celebration
283 (Grant) \$5,940, Piedmont-Annual Back Street Festival
284 (Mineral) \$2,376, Pinch Reunion (Kanawha) \$891, Pine
285 Bluff Fall Festival (Harrison) \$2,376, Pine Grove 4th of
286 July Festival (Wetzel) \$4,158, Pineville Festival
287 (Wyoming) \$3,564, Pleasants County Agriculture Youth
288 Fair \$2,970, Poca Heritage Days (Putnam) \$1,782,
289 Pocahontas County Pioneer Days \$4,159, Point Pleasant
290 Stern Wheel Regatta (Mason) \$2,970, Pratt Fall Festival
291 (Kanawha) \$1,485, Princeton Autumnfest (Mercer)
292 \$1,563, Princeton Street Fair (Mercer) \$2,970, Putnam
293 County Fair \$2,970, Quartets on Parade (Hardy) \$2,376,
294 Rainelle Fall Festival (Greenbrier) \$3,127, Rand
295 Community Center Festival (Kanawha) \$1,485, Randolph
296 County Community Arts Council \$1,782, Randolph County
297 Fair \$4,158, Randolph County Ramp and Rails \$1,188,
298 Ranson Christmas Festival (Jefferson) \$2,970, Ranson
299 Festival (Jefferson) \$2,970, Renick Liberty Festival
300 (Greenbrier) \$684, Ripley 4th of July (Jackson) \$8,910,
301 Ritchie County Fair and Exposition \$2,970, Ritchie County
302 Pioneer Days \$684, River City Festival (Preston) \$684,
303 Roane County Agriculture Field Day \$1,782, Rock the Park
304 (Kanawha) \$3,240, Rocket Boys Festival (Raleigh) \$1,710,
305 Romney Heritage Days (Hampshire) \$1,876, Ronceverte
306 River Festival (Greenbrier) \$2,970, Rowlesburg Labor Day
307 Festival (Preston) \$684, Rupert Country Fling (Greenbrier)
308 \$1,876, Saint Spyridon Greek Festival (Harrison) \$1,485,
309 Salem Apple Butter Festival (Harrison) \$2,376, Sistersville
310 4th of July (Tyler) \$3,267, Skirmish on the River (Mingo)
311 \$1,250, Smoke on the Water (Wetzel) \$1,782, South

312 Charleston Summerfest (Kanawha) \$5,940, Southern
313 Wayne County Fall Festival \$684, Spirit of Grafton
314 Celebration (Taylor) \$5,940, Springfield Peach Festival
315 (Hampshire) \$738, St. Albans City of Lights - December
316 (Kanawha) \$2,970, Sternwheel Festival (Wood) \$1,782,
317 Stoco Reunion (Raleigh) \$1,485, Stonewall Jackson
318 Heritage Arts & Crafts Jubilee (Lewis) \$6,534, Stonewall
319 Jackson's Roundhouse Raid (Berkeley) \$7,200, Storytelling
320 Festival (Lewis) \$400, Strawberry Festival (Upshur)
321 \$17,821, Sylvester Big Coal River Festival (Boone) \$1,944,
322 Tacy Fair (Barbour) \$684, Taste of Parkersburg (Wood)
323 \$2,970, Taylor County Fair \$3,267, Terra Alta VFD 4th of
324 July Celebration (Preston) \$684, The Gathering at Sweet
325 Creek (Wood) \$1,782, Three Rivers Coal Festival (Marion)
326 \$4,604, Thunder on the Tygart - Mothers' Day Celebration
327 (Taylor) \$7,000, Town of Delbarton 4th of July Celebration
328 (Mingo) \$1,782, Town of Fayetteville Heritage Festival
329 (Fayette) \$4,456, Town of Matoaka Hog Roast (Mercer)
330 \$684, Town of Rivesville 4th of July Festival (Marion)
331 \$3,127, Town of Winfield - Putnam County Homecoming
332 \$3,240, St. Albans Train Fest (Kanawha) \$6,120, Treasure
333 Mountain Festival (Pendleton) \$14,851, Tri-County Fair
334 (Grant) \$22,548, Tucker County Arts Festival and
335 Celebration \$10,692, Tucker County Fair \$2,821, Tucker
336 County Health Fair \$1,188, Tunnelton Depot Days
337 (Preston) \$684, Tunnelton Volunteer Fire Department
338 Festival (Preston) \$684, Turkey Festival (Hardy) \$1,782,
339 Tyler County Fair \$3,088, Tyler County 4th of July \$400,
340 Tyler County OctoberFest \$720, Union Community Irish
341 Festival (Barbour) \$648, Uniquely West Virginia Festival
342 (Morgan) \$1,188, Upper Kanawha Valley Oktoberfest
343 (Kanawha) \$1,485, Upper Ohio Valley Italian Festival
344 (Ohio) \$7,128, Upshur County Youth Livestock Show
345 \$1,440, Valley District Fair (Preston) \$2,079, Veterans
346 Welcome Home Celebration (Cabell) \$938, Vietnam
347 Veterans of America # 949 Christmas Party (Cabell) \$684,
348 Volcano Days at Mountwood Park (Wood) \$2,970, War
349 Homecoming Fall Festival (McDowell) \$891,
350 Wardensville Fall Festival (Hardy) \$2,970, Wayne County

351 Fair \$2,970, Wayne County Fall Festival \$2,970, Webster
352 County Fair \$3,600, Webster County Wood Chopping
353 Festival \$8,910, Webster Wild Water Weekend (Webster)
354 \$1,188, Weirton July 4th Celebration (Hancock) \$11,881,
355 Welcome Home Family Day (Wayne) \$1,900, Wellsburg
356 4th of July Celebration (Brooke) \$4,456, Wellsburg Apple
357 Festival of Brooke County \$2,970, West Virginia
358 Blackberry Festival (Harrison) \$2,970, West Virginia
359 Chestnut Festival (Preston) \$684, West Virginia Coal
360 Festival (Boone) \$5,940, West Virginia Coal Show
361 (Mercer) \$1,563, West Virginia Dairy Cattle Show (Lewis)
362 \$5,940, West Virginia Dandelion Festival (Greenbrier)
363 \$2,970, West Virginia Day at the Railroad Museum
364 (Mercer) \$1,800, West Virginia Fair and Exposition (Wood)
365 \$4,812, West Virginia Fireman's Rodeo (Fayette) \$1,485,
366 West Virginia Oil and Gas Festival (Tyler) \$6,534, West
367 Virginia Peach Festival (Hampshire) \$3,240, West Virginia
368 Polled Hereford Association (Braxton) \$891, West Virginia
369 Poultry Festival (Hardy) \$2,970, West Virginia Pumpkin
370 Festival (Cabell) \$5,940, West Virginia State Folk Festival
371 (Gilmer) \$2,970, West Virginia Water Festival - City of
372 Hinton (Summers) \$9,144, Weston VFD 4th of July
373 Firemen Festival (Lewis) \$1,188, Wetzel County
374 Autumnfest \$3,267, Wetzel County Town and Country
375 Days \$10,098, Wheeling Celtic Festival (Ohio) \$1,166,
376 Wheeling City of Lights (Ohio) \$4,752, Wheeling
377 Sternwheel Regatta (Ohio) \$5,940, Wheeling Vintage
378 Raceboat Regatta (Ohio) \$11,881, Whipple Community
379 Action (Fayette) \$1,485, Wileyville Homecoming (Wetzel)
380 \$2,376, Wine Festival and Mountain Music Event
381 (Harrison) \$2,970, Winter Festival of the Waters
382 (Berkeley) \$2,970, Wirt County Fair \$1,485, Wirt County
383 Pioneer Days \$1,188, Wyoming County Civil War Days
384 \$1,296, Youth Stockman Beef Expo (Lewis) \$1,188.

385 Any unexpended balances remaining in the
386 appropriations for Preservation West Virginia (fund 3534,
387 appropriation 09200), Fairs and Festivals (fund 3534,
388 appropriation 12200), Archeological Curation/Capital

389 Improvements (fund 3534, appropriation 24600), Historic
 390 Preservation Grants (fund 3534, appropriation 31100),
 391 Grants for Competitive Arts Program (fund 3534,
 392 appropriation 62400), and Project ACCESS (fund 3534,
 393 appropriation 86500) at the close of the fiscal year 2019 are
 394 hereby reappropriated for expenditure during the fiscal year
 395 2020.

396 Any Fairs & Festivals awards shall be funded in
 397 addition to, and not in lieu of, individual grant allocations
 398 derived from the Arts Council and the Cultural Grant
 399 Program allocations.

295-Library Commission –

Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2020 Org 0433

1	Books and Films	17900	\$	360,784
2	Services to Libraries	18000		550,000
3	Grants to Public Libraries	18200		9,439,571
4	Digital Resources.....	30900		219,992
5	Infomine Network.....	88400		<u>943,353</u>
6	Total.....			\$ 11,513,700

7 Any unexpended balance remaining in the
 8 appropriation for Libraries – Special Projects (fund 3559,
 9 appropriation 62500) at the close of fiscal year 2019 is
 10 hereby reappropriated for expenditure during the fiscal year
 11 2020.

296-Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2020 Org 0508

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 209,640
3	Current Expenses	13000	332,284
4	Repairs and Alterations.....	06400	1,000
5	Local Programs Service		
6	Delivery Costs	20000	2,435,250
7	Silver Haired Legislature	20200	18,500
8	Transfer to Division of Human Services		
9	for Health Care and Title XIX		
10	Waiver for Senior Citizens	53900	4,615,503
11	Roger Tompkins		
12	Alzheimer's Respite Care	64300	2,302,016
13	WV Alzheimer's Hotline	72400	45,000
14	Regional Aged and Disabled		
15	Resource Center.....	76700	425,000
16	Senior Services Medicaid Transfer	87100	16,400,070
17	Legislative Initiatives		
18	for the Elderly	90400	9,671,239
19	Long Term Care Ombudsman	90500	297,226
20	BRIM Premium.....	91300	7,718
21	In-Home Services and		
22	Nutrition for Senior Citizens ...	91700	<u>6,095,941</u>
23	Total.....		\$ 42,856,387

24 Any unexpended balance remaining in the
25 appropriation for Senior Citizen Centers and Programs
26 (fund 5405, appropriation 46200) at the close of the fiscal
27 year 2019 is hereby reappropriated for expenditure during
28 the fiscal year 2020.

29 Included in the above appropriation for Current
30 Expenses (fund 5405, appropriation 13000), is funding to
31 support an in-home direct care workforce registry.

32 The above appropriation for Transfer to Division of
33 Human Services for Health Care and Title XIX Waiver for
34 Senior Citizens (appropriation 53900) along with the
35 federal moneys generated thereby shall be used for
36 reimbursement for services provided under the program.

*297-Higher Education Policy Commission –**Lottery Education –**Higher Education Policy Commission –**Control Account*

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2020 Org 0441

1	RHI Program and		
2	Site Support (R).....	03600	\$ 1,912,491
3	RHI Program and		
4	Site Support –		
5	RHEP Program Administration....	03700	146,653
6	RHI Program and Site Support –		
7	Grad Med		
8	Ed and Fiscal Oversight (R)	03800	88,913
9	Minority Doctoral Fellowship (R)....	16600	129,604
10	Health Sciences Scholarship (R)....	17600	225,527
11	Vice Chancellor for Health Sciences –		
12	Rural Health		
13	Residency Program (R)	60100	62,725
14	WV Engineering, Science, and		
15	Technology Scholarship Program..	86800	<u>452,831</u>
16	Total.....		\$ 3,018,744

17 Any unexpended balances remaining in the
 18 appropriations for RHI Program and Site Support (fund
 19 4925, appropriation 03600), RHI Program and Site Support
 20 – Grad Med Ed and Fiscal Oversight (fund 4925,
 21 appropriation 03800), Minority Doctoral Fellowship (fund
 22 4925, appropriation 16600), Health Sciences Scholarship
 23 (fund 4925, appropriation 17600), and Vice Chancellor for
 24 Health Sciences – Rural Health Residency Program (fund
 25 4925, appropriation 60100) at the close of fiscal year 2019
 26 are hereby reappropriated for expenditure during the fiscal
 27 year 2020.

28 The above appropriation for WV Engineering, Science,
 29 and Technology Scholarship Program (appropriation 86800)
 30 shall be transferred to the West Virginia Engineering, Science
 31 and Technology Scholarship Fund (fund 4928, org 0441)
 32 established by W.Va. Code §18C-6-1.

298-Community and Technical College –

Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2020 Org 0442

1 Debt Service – Total 31000 \$ 5,000,000

2 Any unexpended balance remaining in the
 3 appropriation for Capital Outlay and Improvements – Total
 4 (fund 4908, appropriation 84700) at the close of fiscal year
 5 2019 is hereby reappropriated for expenditure during the
 6 fiscal year 2020.

299-Higher Education Policy Commission –

Lottery Education –

West Virginia University – School of Medicine

(WV Code Chapter 18B)

Fund 4185 FY 2020 Org 0463

1 WVU Health Sciences –
 2 RHI Program and
 3 Site Support (R)..... 03500 \$ 1,181,728
 4 MA Public Health Program
 5 And Health
 6 Science Technology (R) 62300 52,445
 7 Health Sciences Career
 8 Opportunities Program (R) 86900 336,987

9	HSTA Program (R).....	87000	1,761,948
10	Center for Excellence		
11	in Disabilities (R).....	96700	<u>313,517</u>
12	Total.....		\$ 3,646,625

13 Any unexpended balances remaining in the
 14 appropriations for WVU Health Sciences – RHI Program
 15 and Site Support (fund 4185, appropriation 03500), MA
 16 Public Health Program and Health Science Technology
 17 (fund 4185, appropriation 62300), Health Sciences Career
 18 Opportunities Program (fund 4185, appropriation 86900),
 19 HSTA Program (fund 4185, appropriation 87000), and
 20 Center for Excellence in Disabilities (fund 4185,
 21 appropriation 96700) at the close of fiscal year 2019 are
 22 hereby reappropriated for expenditure during the fiscal year
 23 2020.

300-Higher Education Policy Commission –

Lottery Education –

Marshall University – School of Medicine

(WV Code Chapter 18B)

Fund 4896 FY 2020 Org 0471

1	Marshall Medical School –		
2	RHI Program and		
3	Site Support (R).....	03300	\$ 427,075
4	Vice Chancellor for		
5	Health Sciences – Rural Health		
6	Residency Program (R)	60100	<u>171,361</u>
7	Total.....		\$ 598,436

8 Any unexpended balances remaining in the
 9 appropriations for Marshall Medical School – RHI Program
 10 and Site Support (fund 4896, appropriation 03300) and Vice
 11 Chancellor for Health Sciences – Rural Health Residency
 12 Program (fund 4896, appropriation 60100) at the close of

13 fiscal year 2019 are hereby reappropriated for expenditure
14 during the fiscal year 2020.

15 Total TITLE II, Section 4 –

16 Lottery Revenue \$ 127,808,000

1 **Sec. 5. Appropriations from state excess lottery**
2 **revenue fund.** — In accordance with W.Va. Code §29-22-
3 18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-
4 25-22b, the following appropriations shall be deposited and
5 disbursed by the Director of the Lottery to the following
6 accounts in this section in the amounts indicated.

7 After first funding the appropriations required by W.Va.
8 Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-
9 27a and §29-25-22b, the Director of the Lottery shall
10 provide funding from the State Excess Lottery Revenue
11 Fund for the remaining appropriations in this section to the
12 extent that funds are available. In the event that revenues to
13 the State Excess Lottery Revenue Fund are sufficient to
14 meet all the appropriations required made pursuant to this
15 section, then the Director of the Lottery shall then provide
16 the funds available for fund 5365, appropriation 18900.

301-Lottery Commission –

Refundable Credit

Fund 7207 FY 2020 Org 0705

	Appro- priation	Excess Lottery Funds
1 Directed Transfer	70000	\$ 10,000,000

2 The above appropriation shall be transferred to the
3 General Revenue Fund to provide reimbursement for the
4 refundable credit allowable under W.Va. Code §11-21-21.
5 The amount of the required transfer shall be determined
6 solely by the State Tax Commissioner and shall be

7 completed by the Director of the Lottery upon the
8 commissioner’s request.

302-Lottery Commission –

General Purpose Account

Fund 7206 FY 2020 Org 0705

1 General Revenue Fund –
2 Transfer 70011 \$ 65,000,000

3 The above appropriation shall be transferred to the
4 General Revenue Fund as determined by the Director of the
5 Lottery in accordance with W.Va. Code §29-22-18a.

303-Higher Education Policy Commission –

Education Improvement Fund

Fund 4295 FY 2020 Org 0441

1 PROMISE Scholarship –
2 Transfer 80000 \$ 29,000,000

3 The above appropriation shall be transferred to the
4 PROMISE Scholarship Fund (fund 4296, org 0441)
5 established by W.Va. Code §18C-7-7.

6 The Legislature has explicitly set a finite amount of
7 available appropriations and directed the administrators of
8 the Program to provide for the award of scholarships within
9 the limits of available appropriations.

304-Economic Development Authority –

Economic Development Project Fund

Fund 9065 FY 2020 Org 0944

1 Debt Service – Total 31000 \$ 19,000,000

2 Pursuant to W.Va. Code §29-22-18a, subsection (f),
 3 excess lottery revenues are authorized to be transferred to
 4 the lottery fund as reimbursement of amounts transferred to
 5 the economic development project fund pursuant to section
 6 four of this title and W.Va. Code §29-22-18, subsection (f).

305-Department of Education –

School Building Authority

Fund 3514 FY 2020 Org 0402

1	Debt Service – Total	31000	\$	19,000,000
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306-West Virginia Infrastructure Council –

West Virginia Infrastructure Transfer Fund

Fund 3390 FY 2020 Org 0316

1	Directed Transfer	70000	\$	46,000,000
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2 The above appropriation shall be allocated pursuant to
 3 W.Va. Code §29-22-18d and §31-15-9.

307-Higher Education Policy Commission –

Higher Education Improvement Fund

Fund 4297 FY 2020 Org 0441

1	Directed Transfer	70000	\$	15,000,000
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2 The above appropriation shall be transferred to fund
 3 4903, org 0442 as authorized by Senate Concurrent
 4 Resolution No. 41.

308-Division of Natural Resources –

State Park Improvement Fund

Fund 3277 FY 2020 Org 0310

1	Current Expenses (R).....	13000	\$	23,300
2	Repairs and Alterations (R)	06400		161,200
3	Equipment (R).....	07000		200,000
4	Buildings (R).....	25800		100,000
5	Other Assets (R).....	69000		<u>1,020,500</u>
6	Total.....		\$	1,505,000

7 Any unexpended balances remaining in the above
8 appropriations for Repairs and Alterations (fund 3277,
9 appropriation 06400), Equipment (fund 3277, appropriation
10 07000), Unclassified – Total (fund 3277, appropriation
11 09600), Unclassified (fund 3277, appropriation 09900),
12 Current Expenses (fund 3277, appropriation 13000),
13 Buildings (fund 3277, appropriation 25800), and Other
14 Assets (fund 3277, appropriation 69000) at the close of the
15 fiscal year 2019 are hereby reappropriated for expenditure
16 during the fiscal year 2020.

309-Economic Development Authority –

Cacapon and Beech Fork State Parks –

Lottery Revenue Debt Service

Fund 9067 FY 2020 Org 0944

1	Debt Service.....	04000	\$	2,032,000
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310-Economic Development Authority –

State Parks Lottery Revenue Debt Service Fund

Fund 9068 FY 2020 Org 0944

1	Debt Service.....	04000	\$	4,395,000
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311-Racing Commission –

Fund 7308 FY 2020 Org 0707

1	Special Breeders Compensation			
2	(WVC §29-22-18a, subsection (l))....	21800	\$	2,000,000

*312-Lottery Commission –**Distributions to Statutory Funds and Purposes*Fund 7213 FY 2020 Org 0705

1	Parking Garage Fund – Transfer....	70001	\$	500,000
2	2004 Capitol Complex Parking			
3	Garage Fund – Transfer.....	70002		216,478
4	Capitol Dome and Improvements Fund –			
5	Transfer.....	70003		1,796,256
6	Capitol Renovation and Improvement Fund –			
7	Transfer.....	70004		2,381,252
8	Development Office Promotion Fund –			
9	Transfer.....	70005		1,298,864
10	Research Challenge Fund –			
11	Transfer.....	70006		1,731,820
12	Tourism Promotion Fund –			
13	Transfer.....	70007		4,808,142
14	Cultural Facilities and Capitol Resources			
15	Matching Grant			
16	Program Fund – Transfer.....	70008		1,250,535
17	State Debt Reduction Fund –			
18	Transfer.....	70010		20,000,000
19	General Revenue Fund – Transfer ...	70011		1,167,799
20	West Virginia Racing			
21	Commission Racetrack			
22	Video Lottery Account	70012		3,463,637
23	Historic Resort Hotel Fund	70013		24,010
24	Licensed Racetrack			
25	Regular Purse Fund	70014		<u>22,383,247</u>
26	Total.....		\$	61,022,040

313-Governor's Office

(WV Code Chapter 5)

Fund 1046 FY 2020 Org 0100

- Any unexpended balance remaining in the
- appropriation for Publication of Papers and Transition

3 Expenses – Lottery Surplus (fund 1046, appropriation
4 06600) at the close of the fiscal year 2019 is hereby
5 reappropriated for expenditure during the fiscal year 2020.

314-West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2020 Org 0307

1 Any unexpended balances remaining in the
2 appropriations for Unclassified – Total (fund 3170,
3 appropriation 09600), Recreational Grants or Economic
4 Development Loans (fund 3170, appropriation 25300), and
5 Connectivity Research and Development – Lottery Surplus
6 (fund 3170, appropriation 92300) at the close of the fiscal
7 year 2019 are hereby reappropriated for expenditure during
8 the fiscal year 2020.

315-Higher Education Policy Commission –

Administration –

Control Account

(WV Code Chapter 18B)

Fund 4932 FY 2020 Org 0441

1 Any unexpended balance remaining in the
2 appropriation for Advanced Technology Centers (fund
3 4932, appropriation 02800) at the close of the fiscal year
4 2019 is hereby reappropriated for expenditure during the
5 fiscal year 2020.

316-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2020 Org 0511

1 Medical Services..... 18900 \$16,302,960

*317-Division of Corrections and Rehabilitation –
Correctional Units*

(WV Code Chapter 15A)

Fund 6283 FY 2020 Org 0608

1 Any unexpended balance remaining in the
2 appropriation for Capital Outlay and Maintenance (fund
3 6283, appropriation 75500) at the close of the fiscal year
4 2019 is hereby reappropriated for expenditure during the
5 fiscal year 2020.

6 Total TITLE II, Section 5 –
7 Excess Lottery Funds \$290,257,000

1 **Sec. 6. Appropriations of federal funds.** — In
2 accordance with Article 11, Chapter 4 of the Code from
3 federal funds there are hereby appropriated conditionally
4 upon the fulfillment of the provisions set forth in Article 2,
5 Chapter 11B of the Code the following amounts, as
6 itemized, for expenditure during the fiscal year 2020.

LEGISLATIVE

318-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2020 Org 2300

	Appropriation	Federal Funds
1 Economic Loss Claim		
2 Payment Fund.....	33400	\$ 2,000,000

JUDICIAL

319-Supreme Court

Fund 8867 FY 2020 Org 2400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,813,000
3	Current Expenses	13000	2,057,000
4	Repairs and Alterations.....	06400	100,000
5	Equipment.....	07000	250,000
6	Other Assets.....	69000	<u>280,000</u>
7	Total.....		\$ 4,500,000

EXECUTIVE*320-Department of Agriculture*

(WV Code Chapter 19)

Fund 8736 FY 2020 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,628,780
3	Unclassified	09900	50,534
4	Current Expenses	13000	3,828,661
5	Repairs and Alterations.....	06400	650,000
6	Equipment.....	07000	910,500
7	Buildings.....	25800	1,000,000
8	Other Assets.....	69000	50,000
9	Land.....	73000	<u>500,000</u>
10	Total.....		\$ 9,618,475

*321-Department of Agriculture –**Meat Inspection Fund*

(WV Code Chapter 19)

Fund 8737 FY 2020 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 658,571
3	Unclassified	09900	8,755
4	Current Expenses	13000	136,012
5	Repairs and Alterations.....	06400	5,500
6	Equipment.....	07000	<u>114,478</u>
7	Total.....		\$ 923,316

*322-Department of Agriculture –**State Conservation Committee*

(WV Code Chapter 19)

Fund 8783 FY 2020 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 97,250
3	Current Expenses	13000	<u>15,599,974</u>
4	Total.....		\$ 15,697,224

*323-Department of Agriculture –**Land Protection Authority*Fund 8896 FY 2020 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 46,526
3	Unclassified	09900	5,004
4	Current Expenses	13000	<u>448,920</u>
5	Total.....		\$ 500,451

*324-Secretary of State –**State Election Fund*

(WV Code Chapter 3)

Fund 8854 FY 2020 Org 1600

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 210,240
3	Unclassified	09900	7,484
4	Current Expenses	13000	415,727
5	Repairs and Alterations.....	06400	15,000
6	Other Assets.....	69000	<u>100,000</u>
7	Total.....		\$ 748,451

DEPARTMENT OF COMMERCE

325-Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2020 Org 0305

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,640,060
3	Unclassified	09900	51,050
4	Current Expenses	13000	5,232,560
5	Repairs and Alterations.....	06400	155,795
6	Equipment.....	07000	100,000
7	Other Assets.....	69000	<u>1,808,300</u>
8	Total.....		\$ 8,987,765

326-Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2020 Org 0306

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 54,432
3	Unclassified	09900	2,803
4	Current Expenses	13000	195,639
5	Repairs and Alterations.....	06400	5,000
6	Equipment.....	07000	7,500
7	Other Assets.....	69000	<u>15,000</u>
8	Total.....		\$ 280,374

327-West Virginia Development Office

(WV Code Chapter 5B)

Fund 8705 FY 2020 Org 0307

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 789,921
3	Unclassified	09900	50,000
4	Current Expenses	13000	<u>4,504,019</u>
5	Total.....		\$ 5,343,940

*328-West Virginia Development Office –**Office of Economic Opportunity*

(WV Code Chapter 5)

Fund 8901 FY 2020 Org 0307

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 497,289
3	Repairs and Alterations.....	06400	250
4	Equipment.....	07000	6,000
5	Unclassified	09900	106,795
6	Current Expenses	13000	<u>10,069,166</u>
7	Total.....		\$ 10,679,500

329-Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 2020 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 409,251
3	Unclassified	09900	5,572
4	Current Expenses	13000	167,098
5	Repairs and Alterations.....	06400	<u>500</u>
6	Total.....		\$ 582,421

330-Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2020 Org 0310

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 8,237,073
3	Unclassified	09900	107,693
4	Current Expenses	13000	5,556,594
5	Repairs and Alterations.....	06400	289,400
6	Equipment.....	07000	1,815,182
7	Buildings.....	25800	951,000

8	Other Assets.....	69000	6,951,000
9	Land.....	73000	<u>6,001,000</u>
10	Total.....		\$ 29,908,942

331-Division of Miners' Health,

Safety and Training

(WV Code Chapter 22)

Fund 8709 FY 2020 Org 0314

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 642,799
3	Current Expenses.....	13000	<u>150,000</u>
4	Total.....		\$ 792,799

332-WorkForce West Virginia

(WV Code Chapter 23)

Fund 8835 FY 2020 Org 0323

1	Unclassified	09900	\$ 5,127
2	Current Expenses.....	13000	507,530
3	Reed Act 2002 – Unemployment		
4	Compensation.....	62200	2,850,000
5	Reed Act 2002 –		
6	Employment Services.....	63000	<u>1,650,000</u>
7	Total.....		\$ 5,012,657

8 Pursuant to the requirements of 42 U.S.C. 1103, Section
9 903 of the Social Security Act, as amended, and the
10 provisions of W.Va. Code §21A-9-9, the above
11 appropriation to Unclassified and Current Expenses shall be
12 used by WorkForce West Virginia for the specific purpose
13 of administration of the state's unemployment insurance
14 program or job service activities, subject to each and every
15 restriction, limitation or obligation imposed on the use of
16 the funds by those federal and state statutes.

333-Office of Energy

(WV Code Chapter 5B)

Fund 8892 FY 2020 Org 0328

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 426,385
3	Unclassified	09900	7,350
4	Current Expenses	13000	<u>2,816,076</u>
5	Total.....		\$ 3,249,811

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

(WV Code Chapter 18)

Fund 8734 FY 2020 Org 0932

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 11,863,244
3	Current Expenses	13000	34,440,940
4	Repairs and Alterations.....	06400	350,400
5	Equipment.....	07000	<u>1,275,870</u>
6	Total.....		\$ 47,930,454

*335-State Board of Rehabilitation –**Division of Rehabilitation Services –**Disability Determination Services*

(WV Code Chapter 18)

Fund 8890 FY 2020 Org 0932

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 14,476,122
3	Current Expenses	13000	11,383,206
4	Repairs and Alterations.....	06400	1,100
5	Equipment.....	07000	<u>83,350</u>
6	Total.....		\$ 25,943,778

DEPARTMENT OF EDUCATION*336-State Board of Education –**State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2020 Org 0402

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 5,785,359
3	Unclassified	09900	2,000,000
4	Current Expenses	13000	212,367,820
5	Repairs and Alterations.....	06400	10,000
6	Equipment.....	07000	10,000
7	Other Assets.....	69000	<u>10,000</u>
8	Total.....		\$ 220,183,179

*337-State Board of Education –**School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2020 Org 0402

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,881,766
3	Unclassified	09900	1,150,500
4	Current Expenses	13000	148,281,265
5	Repairs and Alterations.....	06400	20,000
6	Equipment.....	07000	100,000
7	Other Assets.....	69000	<u>25,000</u>
8	Total.....		\$ 151,458,531

*338-State Board of Education –**Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2020 Org 0402

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,896,249
3	Unclassified	09900	155,000
4	Current Expenses	13000	14,820,081
5	Repairs and Alterations.....	06400	10,000
6	Equipment.....	07000	10,000
7	Other Assets.....	69000	<u>10,000</u>
8	Total.....		\$ 16,901,330

339-State Board of Education –

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2020 Org 0402

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,477,006
3	Unclassified	09900	1,000,000
4	Current Expenses	13000	113,346,390
5	Repairs and Alterations.....	06400	10,000
6	Equipment.....	07000	10,000
7	Other Assets.....	69000	<u>10,000</u>
8	Total.....		\$ 117,853,396

**DEPARTMENT OF ARTS, CULTURE, AND
HISTORY**

340-Commission for National and Community Service

(WV Code Chapter 5F)

Fund 8841 FY 2020 Org 0432

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 437,040
3	Current Expenses	13000	5,587,325
4	Repairs and Alterations.....	06400	<u>1,000</u>
5	Total.....		\$ 6,025,365

341-Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2020 Org 0432

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 810,436
3	Current Expenses	13000	1,947,372
4	Repairs and Alterations.....	06400	1,000
5	Equipment.....	07000	1,000
6	Buildings.....	25800	1,000
7	Other Assets.....	69000	1,000
8	Land.....	73000	<u>360</u>
9	Total.....		\$ 2,762,168

342-Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2020 Org 0433

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 353,396
3	Current Expenses	13000	1,076,162
4	Equipment.....	07000	<u>543,406</u>
5	Total.....		\$ 1,972,964

343-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2020 Org 0439

1	Equipment.....	07000	\$ 200,000
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DEPARTMENT OF ENVIRONMENTAL PROTECTION*344-Division of Environmental Protection*

(WV Code Chapter 22)

Fund 8708 FY 2020 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 31,404,529
3	Current Expenses	13000	154,302,118
4	Repairs and Alterations.....	06400	738,283
5	Equipment.....	07000	1,712,238
6	Unclassified	09900	1,923,580
7	Other Assets.....	69000	2,177,261
8	Land.....	73000	<u>100,000</u>
9	Total.....		\$192,358,009

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

345-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8723 FY 2020 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,532,219
3	Unclassified	09900	73,307
4	Current Expenses	13000	<u>51,583,302</u>
5	Total.....		\$ 53,188,828

346-Division of Health –

Central Office

(WV Code Chapter 16)

Fund 8802 FY 2020 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 14,610,947
3	Unclassified	09900	856,614
4	Current Expenses	13000	69,201,885
5	Equipment.....	07000	456,972
6	Buildings.....	25800	155,000
7	Other Assets.....	69000	<u>380,000</u>
8	Total.....		\$ 85,661,418

*347-Division of Health –**West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 2020 Org 0506

1	West Virginia Drinking Water		
2	Treatment Revolving Fund –		
3	Transfer	68900	\$ 16,000,000

348-Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2020 Org 0510

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 449,874
3	Unclassified	09900	5,050
4	Current Expenses	13000	<u>64,950</u>
5	Total.....		\$ 519,874

349-Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 8722 FY 2020 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 75,747,114
3	Unclassified	09900	22,855,833
4	Current Expenses	13000	112,085,005
5	Medical Services.....	18900	3,539,265,405
6	Medical Services		
7	Administrative Costs	78900	132,247,536
8	CHIP Administrative Costs	85601	4,539,496
9	CHIP Services.....	85602	47,422,974
10	Federal Economic Stimulus	89100	<u>5,000,000</u>
11	Total.....		\$3,939,163,363

**DEPARTMENT OF MILITARY AFFAIRS AND
PUBLIC SAFETY**

350-Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2020 Org 0601

1	Unclassified	09900	\$ 30,000
2	Current Expenses	13000	<u>2,970,000</u>
3	Total.....		\$ 3,000,000

351-Adjutant General –

State Militia

(WV Code Chapter 15)

Fund 8726 FY 2020 Org 0603

1	Unclassified	09900	\$ 982,705
2	Mountaineer ChalleNGe Academy	70900	4,978,680
3	Martinsburg Starbase	74200	439,622
4	Charleston Starbase.....	74300	424,685
5	Military Authority.....	74800	<u>93,601,594</u>
6	Total.....		\$100,427,286

7 The Adjutant General shall have the authority to transfer
8 between appropriations.

352-Adjutant General –

West Virginia National Guard Counterdrug Forfeiture Fund

(WV Code Chapter 15)

Fund 8785 FY 2020 Org 0603

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,350,000
3	Current Expenses	13000	300,000
4	Equipment.....	07000	<u>350,000</u>
5	Total.....		\$ 2,000,000

*353-Division of Homeland Security and
Emergency Management*

(WV Code Chapter 15)

Fund 8727 FY 2020 Org 0606

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 721,650
3	Current Expenses	13000	20,429,281
4	Repairs and Alterations.....	06400	5,000
5	Equipment.....	07000	<u>100,000</u>
6	Total.....		\$ 21,255,931

354-Division of Corrections and Rehabilitation

(WV Code Chapters 15A)

Fund 8836 FY 2020 Org 0608

1	Unclassified	09900	\$ 1,100
2	Current Expenses	13000	<u>108,900</u>
3	Total.....		\$ 110,000

355-West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2020 Org 0612

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,480,877
3	Current Expenses	13000	2,125,971
4	Repairs and Alterations.....	06400	42,000
5	Equipment.....	07000	2,502,285
6	Buildings.....	25800	750,500
7	Other Assets.....	69000	144,500
8	Land.....	73000	<u>500</u>
9	Total.....		\$ 8,046,633

356-Fire Commission

(WV Code Chapter 29)

Fund 8819 FY 2020 Org 0619

1	Current Expenses.....	13000	\$	80,000
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357-Division of Justice and Community Services

(WV Code Chapter 15)

Fund 8803 FY 2020 Org 0620

1	Personal Services and			
2	Employee Benefits.....	00100	\$	1,222,258
3	Unclassified	09900		25,185
4	Current Expenses	13000		25,381,973
5	Repairs and Alterations.....	06400		<u>1,750</u>
6	Total.....			\$26,631,166

DEPARTMENT OF REVENUE

358-Insurance Commissioner

(WV Code Chapter 33)

Fund 8883 FY 2020 Org 0704

1	Current Expenses.....	13000	\$	3,000,000
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DEPARTMENT OF TRANSPORTATION

359-Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2020 Org 0802

1	Personal Services and			
2	Employee Benefits.....	00100	\$	501,394
3	Current Expenses	13000		6,498,106
4	Repairs and Alterations.....	06400		<u>500</u>
5	Total.....			\$ 7,000,000

360-Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2020 Org 0805

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 922,070
3	Current Expenses	13000	9,163,149
4	Repairs and Alterations.....	06400	2,500
5	Equipment.....	07000	2,801,714
6	Buildings.....	25800	650,000
7	Other Assets.....	69000	<u>200,000</u>
8	Total.....		\$ 13,739,433

DEPARTMENT OF VETERANS' ASSISTANCE*361-Department of Veterans' Assistance*

(WV Code Chapter 9A)

Fund 8858 FY 2020 Org 0613

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,774,248
3	Current Expenses	13000	3,270,000
4	Equipment.....	07000	213,000
5	Buildings.....	25800	<u>600,000</u>
6	Total.....		\$ 6,857,248

*362-Department of Veterans' Assistance –**Veterans' Home*

(WV Code Chapter 9A)

Fund 8728 FY 2020 Org 0618

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 955,426
3	Current Expenses	13000	844,092
4	Repairs and Alterations.....	06400	220,000

5	Equipment.....	07000	198,000
6	Buildings.....	25800	296,000
7	Other Assets.....	69000	20,000
8	Land.....	73000	<u>10,000</u>
9	Total.....		\$ 2,543,518

BUREAU OF SENIOR SERVICES

363-Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2020 Org 0508

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 767,364
3	Current Expenses.....	13000	13,811,853
4	Repairs and Alterations.....	06400	<u>3,000</u>
5	Total.....		\$ 14,582,217

MISCELLANEOUS BOARDS AND COMMISSIONS

364-Public Service Commission –

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8743 FY 2020 Org 0926

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,352,576
3	Current Expenses.....	13000	368,953
4	Repairs and Alterations.....	06400	39,000
5	Equipment.....	07000	<u>1,000</u>
6	Total.....		\$ 1,761,529

365-Public Service Commission –

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8744 FY 2020 Org 0926

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 621,039
3	Current Expenses	13000	124,628
4	Equipment.....	07000	3,000
5	Unclassified	09900	<u>4,072</u>
6	Total.....		\$ 752,739

366-National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2020 Org 0941

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 163,315
3	Current Expenses	13000	633,597
4	Repairs and Alterations.....	06400	5,000
5	Equipment.....	07000	3,000
6	Other Assets.....	69000	<u>2,000</u>
7	Total.....		\$ <u>806,912</u>
8	Total TITLE II, Section 6 –		
9	Federal Funds		<u>\$ 5,189,543,394</u>

- 1 **Sec. 7. Appropriations from federal block grants.** —
2 The following items are hereby appropriated from federal
3 block grants to be available for expenditure during the fiscal
4 year 2020.

*367-West Virginia Development Office –**Community Development*Fund 8746 FY 2020 Org 0307

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 10,658,978
3	Unclassified	09900	2,375,000
4	Current Expenses	13000	<u>224,476,883</u>
5	Total.....		\$237,510,861

*368-Department of Commerce
West Virginia Development Office –
Office of Economic Opportunity –
Community Services*

Fund 8902 FY 2020 Org 0307

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 362,389
3	Unclassified	09900	125,000
4	Current Expenses	13000	12,002,111
5	Repairs and Alterations.....	06400	1,500
6	Equipment.....	07000	<u>9,000</u>
7	Total.....		\$ 12,500,000

369-WorkForce West Virginia –

Workforce Investment Act

Fund 8749 FY 2020 Org 0323

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,999,497
3	Unclassified	09900	23,023
4	Current Expenses	13000	39,263,511
5	Repairs and Alterations.....	06400	1,600
6	Equipment.....	07000	500
7	Buildings.....	25800	<u>1,100</u>
8	Total.....		\$ 42,289,231

370-Division of Health –

Maternal and Child Health

Fund 8750 FY 2020 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,268,209
3	Unclassified	09900	81,439
4	Current Expenses	13000	<u>5,794,267</u>
5	Total.....		\$ 8,143,915

*371-Division of Health –**Preventive Health*Fund 8753 FY 2020 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 268,337
3	Unclassified	09900	22,457
4	Current Expenses	13000	1,895,366
5	Equipment.....	07000	<u>165,642</u>
6	Total.....		\$ 2,351,802

*372-Division of Health –**Substance Abuse Prevention and Treatment*Fund 8793 FY 2020 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 657,325
3	Unclassified	09900	115,924
4	Current Expenses	13000	<u>10,853,740</u>
5	Total.....		\$ 11,626,989

*373-Division of Health –**Community Mental Health Services*Fund 8794 FY 2020 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 551,368
3	Unclassified	09900	33,533
4	Current Expenses	13000	<u>4,883,307</u>
5	Total.....		\$ 5,468,208

*374-Division of Human Services –**Energy Assistance*Fund 8755 FY 2020 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,856,844
3	Unclassified	09900	350,000
4	Current Expenses	13000	<u>33,181,300</u>
5	Total.....		\$ 35,388,144

375-Division of Human Services –

Social Services

Fund 8757 FY 2020 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 8,806,005
3	Unclassified	09900	171,982
4	Current Expenses	13000	<u>8,870,508</u>
5	Total.....		\$ 17,848,495

376-Division of Human Services –

Temporary Assistance for Needy Families

Fund 8816 FY 2020 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 19,913,598
3	Unclassified	09900	1,250,000
4	Current Expenses	13000	<u>105,847,136</u>
5	Total.....		\$ 127,010,734

377-Division of Human Services –

Child Care and Development

Fund 8817 FY 2020 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,793,496
3	Unclassified	09900	350,000
4	Current Expenses	13000	<u>46,999,456</u>
5	Total.....		\$ 50,142,952
6	Total TITLE II, Section 7 –		
7	Federal Block Grants.....		<u>\$ 550,281,331</u>

1 **Sec. 8. Awards for claims against the state.** — There
 2 are hereby appropriated for fiscal year 2020, from the fund
 3 as designated, in the amounts as specified, general revenue
 4 funds in the amount of \$642,817 special revenue funds in
 5 the amount of \$212,743 and state road funds in the amount
 6 of \$1,703,146 for payment of claims against the state.

1 **Sec. 9. Appropriations from general revenue fund**
 2 **surplus accrued.** — The following item is hereby
 3 appropriated from the state fund, general revenue, and is to
 4 be available for expenditure during the fiscal year 2020 out
 5 of surplus funds only, accrued from the fiscal year ending
 6 June 30, 2019, subject to the terms and conditions set forth
 7 in this section.

8 It is the intent and mandate of the Legislature that the
 9 following appropriation be payable only from surplus as of
 10 July 31, 2019 from the fiscal year ending June 30, 2019,
 11 only after first meeting requirements of W.Va. Code §11B-
 12 2-20(b).

13 In the event that surplus revenues available on July 31,
 14 2019, are not sufficient to meet the appropriation made
 15 pursuant to this section, then the appropriation shall be
 16 made to the extent that surplus funds are available as of the
 17 date mandated to meet the appropriation in this section and
 18 shall be allocated first to provide the necessary funds to
 19 meet the first appropriation of this section and each
 20 subsequent appropriation in the order listed in this section.

378-Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2020 Org 1400

1 WV Food Banks – Surplus ##### \$ 300,000

379-State Board of Education

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2020 Org 0402

1 Directed Transfer – Surplus..... ##### \$ 3,500,000

2 The above appropriation for Directed Transfer - Surplus
3 (fund 0313, appropriation #####) shall be transferred to the
4 Safe Schools Fund (fund XXXX, org 0402) established by
5 W.Va. Code §18-5-48.

380-Shepherd University

(WV Code Chapter 18B)

Fund 0366 FY 2020 Org 0486

1 Shepherd University – Surplus ##### \$ 500,000

381-Blue Ridge Community and Technical College

(WV Code Chapter 18B)

Fund 0601 FY 2020 Org 0477

1 Blue Ridge Community and
2 Technical College – Surplus.... ##### \$ 500,000

*382-Eastern West Virginia Community
and Technical College*

(WV Code Chapter 18B)

Fund 0587 FY 2020 Org 0492

1 Eastern West Virginia Community
2 and Technical College –
3 Surplus..... ##### \$ 500,000

383-West Virginia University at Parkersburg

(WV Code Chapter 18B)

Fund 0131 FY 2020 Org 0464

1	West Virginia University		
2	at Parkersburg – Surplus.....	#####	\$ 500,000

384-Glenville State College

(WV Code Chapter 18B)

Fund 0363 FY 2020 Org 0485

1	Glenville State College – Surplus..		
		#####	\$ 500,000

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

(WV Code Chapter 16)

Fund 0407 FY 2020 Org 0506

1	New Born Screening Testing –		
2	Surplus.....	#####	\$ 200,000

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

(WV Code Chapter 16)

Fund 0407 FY 2020 Org 0506

1	Sexual Assault Intervention		
2	and Prevention – Surplus.....	#####	\$ 125,000

387-West Virginia Tourism Office

(WV Code Chapter 5B)

Fund 0246 FY 2020 Org 0304

1	Tourism – Brand Promotion –		
2	Surplus.....	#####	\$ 5,000,000
3	Tourism – Public Relations –		
4	Surplus.....	#####	750,000

5	Tourism – Events and Sponsorships –		
6	Surplus.....	#####	250,000
7	Tourism – Industry Development –		
8	Surplus.....	#####	250,000
9	State Parks and Recreation Adverstising –		
10	Surplus.....	#####	750,000
11	Total.....		\$ 7,000,000

388-State Board of Education

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2020 Org 0402

1	Jim’s Dream – Surplus.....	#####	\$ 4,000,000
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389-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2020 Org 0506

1	Jim’s Dream – Surplus.....	#####	\$ 1,000,000
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390-Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2020 Org 0511

1	Medical Services – Surplus.....	63300	\$ 53,000,000
2	Total TITLE II, Section 9 –		
3	Surplus Accrued		<u>\$ 71,625,000</u>

1 **Sec. 10. Appropriations from lottery net profits**
 2 **surplus accrued.** — The following item is hereby
 3 appropriated from the lottery net profits, and is to be
 4 available for expenditure during the fiscal year 2020 out of
 5 surplus funds only, as determined by the director of lottery,

6 accrued from the fiscal year ending June 30, 2019, subject
7 to the terms and conditions set forth in this section.

8 It is the intent and mandate of the Legislature that the
9 following appropriation be payable only from surplus
10 accrued from the fiscal year ending June 30, 2019.

11 In the event that surplus revenues available from the
12 fiscal year ending June 30, 2019, are not sufficient to meet
13 the appropriation made pursuant to this section, then the
14 appropriation shall be made to the extent that surplus funds
15 are available.

391-Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2020 Org 0508

1	Senior Nutrition Vehicle Replacement –		
2	Lottery Surplus	#####	\$ 1,000,000
3	In-Home Services and Nutrition for		
4	Senior Citizens –		
5	Lottery Surplus	#####	750,000
6	Senior Services Medicaid Transfer –		
7	Lottery Surplus	68199	<u>16,000,000</u>
8	Total.....		\$ 17,750,000
9	Total TITLE II, Section 10 –		
10	Surplus Accrued		<u>\$ 17,750,000</u>

1 **Sec. 11. Appropriations from state excess lottery**
2 **revenue surplus accrued.** — The following item is hereby
3 appropriated from the State Excess Lottery Revenue Fund,
4 and is to be available for expenditure during the fiscal year
5 2020 out of surplus funds only, as determined by the
6 director of lottery, accrued from the fiscal year ending June
7 30, 2019, subject to the terms and conditions set forth in this
8 section.

9 It is the intent and mandate of the Legislature that the
 10 following appropriation be payable only from surplus
 11 accrued from the fiscal year ending June 30, 2019.

12 In the event that surplus revenues available from the
 13 fiscal year ending June 30, 2019, are not sufficient to meet
 14 the appropriation made pursuant to this section, then the
 15 appropriation shall be made to the extent that surplus funds
 16 are available.

392-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2020 Org 0511

1	Medical Services –	
2	Lottery Surplus	68100 \$ 17,000,000
3	Total TITLE II, Section 11 –	
4	Surplus Accrued	<u>\$ 17,000,000</u>

1 **Sec. 12. Special revenue appropriations.** — There are
 2 hereby appropriated for expenditure during the fiscal year
 3 2020 appropriations made by general law from special
 4 revenues which are not paid into the state fund as general
 5 revenue under the provisions of W.Va. Code §12-2-2:
 6 *Provided*, That none of the money so appropriated by this
 7 section shall be available for expenditure except in
 8 compliance with the provisions of W.Va. Code §12-2 and
 9 3, and W.Va. Code §11B-2, unless the spending unit has
 10 filed with the director of the budget and the legislative
 11 auditor prior to the beginning of each fiscal year:

12 (a) An estimate of the amount and sources of all
 13 revenues accruing to such fund; and

14 (b) A detailed expenditure schedule showing for what
 15 purposes the fund is to be expended.

16 During Fiscal Year 2020, the following funds are
 17 hereby available and are to be transferred to the appropriate

18 funds as specified from available balances per the
19 following:

393-Attorney General

Consumer Protection Recovery Fund

(WV Code Chapter 46A)

Fund 1509 FY 2020 Org 1500

1 Directed Transfer 70000 \$ 3,400,000

2 From the above appropriation for Directed Transfer
3 (Fund 1509, appropriation 70000), \$1,000,000 shall be
4 transferred to the West Virginia State Police – Forensic
5 Laboratory Fund (Fund 6511) and \$2,400,000 shall be
6 transferred to the Department of Health and Human
7 Resources, Division of Human Services – Medical Services
8 Trust Fund (Fund 5185).

394-Department of Administration

Premium Tax Savings Fund

(WV Code Chapter 29)

Fund 2367 FY 2020 Org 0218

1 Directed Transfer 70000 \$ 6,149,802

2 The above appropriation for Directed Transfer (Fund
3 2367, appropriation 70000) shall be transferred to the
4 Department of Health and Human Resources, Division of
5 Human Services – Medical Services Trust Fund (Fund
6 5185).

7 Total TITLE II, Section 12 –
8 Special Revenue \$ 9,549,802

1 **Sec. 13. State improvement fund appropriations.** —
2 Bequests or donations of nonpublic funds, received by the

3 Governor on behalf of the state during the fiscal year 2020,
4 for the purpose of making studies and recommendations
5 relative to improvements of the administration and
6 management of spending units in the executive branch of
7 state government, shall be deposited in the state treasury in
8 a separate account therein designated state improvement
9 fund.

10 There are hereby appropriated all moneys so deposited
11 during the fiscal year 2020 to be expended as authorized by
12 the Governor, for such studies and recommendations which
13 may encompass any problems of organization, procedures,
14 systems, functions, powers or duties of a state spending unit
15 in the executive branch, or the betterment of the economic,
16 social, educational, health and general welfare of the state
17 or its citizens.

1 **Sec. 14. Specific funds and collection accounts.** — A
2 fund or collection account which by law is dedicated to a
3 specific use is hereby appropriated in sufficient amount to
4 meet all lawful demands upon the fund or collection account
5 and shall be expended according to the provisions of Article
6 3, Chapter 12 of the Code.

1 **Sec. 15. Appropriations for refunding erroneous**
2 **payment.** — Money that has been erroneously paid into the
3 state treasury is hereby appropriated out of the fund into
4 which it was paid, for refund to the proper person.

5 When the officer authorized by law to collect money for
6 the state finds that a sum has been erroneously paid, he or
7 she shall issue his or her requisition upon the Auditor for the
8 refunding of the proper amount. The Auditor shall issue his
9 or her warrant to the Treasurer and the Treasurer shall pay
10 the warrant out of the fund into which the amount was
11 originally paid.

1 **Sec. 16. Sinking fund deficiencies.** — There is hereby
2 appropriated to the Governor a sufficient amount to meet
3 any deficiencies that may arise in the mortgage finance
4 bond insurance fund of the West Virginia Housing
5 Development Fund which is under the supervision and
6 control of the Municipal Bond Commission as provided by
7 W.Va. Code §31-18-20b, or in the funds of the Municipal
8 Bond Commission because of the failure of any state agency
9 for either general obligation or revenue bonds or any local
10 taxing district for general obligation bonds to remit funds
11 necessary for the payment of interest and sinking fund
12 requirements. The Governor is authorized to transfer from
13 time to time such amounts to the Municipal Bond
14 Commission as may be necessary for these purposes.

15 The Municipal Bond Commission shall reimburse the
16 state of West Virginia through the Governor from the first
17 remittance collected from the West Virginia Housing
18 Development Fund or from any state agency or local taxing
19 district for which the Governor advanced funds, with
20 interest at the rate carried by the bonds for security or
21 payment of which the advance was made.

1 **Sec. 17. Appropriations for local governments.** —
2 There are hereby appropriated for payment to counties,
3 districts and municipal corporations such amounts as will be
4 necessary to pay taxes due counties, districts and municipal
5 corporations and which have been paid into the treasury:

- 6 (a) For redemption of lands;
- 7 (b) By public service corporations;
- 8 (c) For tax forfeitures.

1 **Sec. 18. Total appropriations.** — Where only a total
2 sum is appropriated to a spending unit, the total sum shall
3 include personal services and employee benefits, annual
4 increment, current expenses, repairs and alterations,

5 buildings, equipment, other assets, land, and capital outlay,
6 where not otherwise specifically provided and except as
7 otherwise provided in TITLE I – GENERAL
8 PROVISIONS, Sec. 3.

1 **Sec. 19. General school fund.** — The balance of the
2 proceeds of the general school fund remaining after the
3 payment of the appropriations made by this act is
4 appropriated for expenditure in accordance with W.Va.
5 Code §18-9A-16.

TITLE III – ADMINISTRATION

1 **Sec. 1. Appropriations conditional.** — The
2 expenditure of the appropriations made by this act, except
3 those appropriations made to the legislative and judicial
4 branches of the state government, are conditioned upon the
5 compliance by the spending unit with the requirements of
6 Article 2, Chapter 11B of the Code.

7 Where spending units or parts of spending units have
8 been absorbed by or combined with other spending units, it
9 is the intent of this act that appropriations and
10 reappropriations shall be to the succeeding or later spending
11 unit created, unless otherwise indicated.

1 **Sec. 2. Constitutionality.** — If any part of this act is
2 declared unconstitutional by a court of competent
3 jurisdiction, its decision shall not affect any portion of this
4 act which remains, but the remaining portion shall be in full
5 force and effect as if the portion declared unconstitutional
6 had never been a part of the act.

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CHAPTER 32

**(H. B. 2665 - By Hanshaw (Mr. Speaker) and
Delegate Miley)
[By Request of the Executive]**

[Passed March 9, 2019; in effect from passage.]
[Approved by the Governor on March 14, 2019.]

AN ACT supplementing and amending by adding a new appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Revenue, State Budget Office, Fund 0595, fiscal year 2019, organization 0703, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for the fiscal year 2019; and

Whereas, It appears from the Executive Budget document, Statement of the State Fund, General Revenue there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to Fund 0595, fiscal year 2019, organization 0703, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

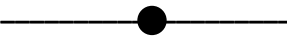
DEPARTMENT OF REVENUE

76 – State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2019 Org 0703

	Appropriation	General Revenue Fund
1 2a PEIA Rainy Day Fee	01201	\$ 105,000,000
2 The above appropriation for PEIA Rainy Day Fee (Fund		
3 0595, appropriation 01201) may be allocated and		
4 transferred to various General Revenue Funds to be used for		
5 payment of the PEIA Rainy Day Fee assessed by the		
6 Secretary of Revenue authorized in §5-16-27 of the code.		
7 Receiving agencies shall transfer the allocated funds to the		
8 PEIA Rainy Day Fund prior to the close of the fiscal year		
9 2019. Any balance remaining in the appropriation after		
10 allocation shall be transferred to the PEIA Rainy Day Fund		
11 prior to the close of the fiscal year 2019.		



CHAPTER 33

**(H. B. 2666 - By Hanshaw (Mr. Speaker) and
Delegate Miley)
[By Request of the Executive]**

[Passed February 21, 2019; in effect from passage.]

[Approved by the Governor on March 1, 2019.]

AN ACT supplementing and amending by increasing existing items of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Veterans' Assistance, Department of Veterans' Assistance, fund 0456, fiscal year 2019, organization 0613, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for the fiscal year 2019; and

Whereas, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 0456, fiscal year 2019, organization 0613, be

supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF VETERANS' ASSISTANCE

83 – Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 0456 FY 2019 Org 0613

		Appro- priation	General Revenue Fund
1	7	Veterans' Nursing Home (R)...	28600 \$ 6,000,000
2	12	Veterans' Grant Program (R) ..	34200 200,000

CHAPTER 34

**(H. B. 2667 - By Hanshaw (Mr. Speaker) and
Delegate Miley)
[By Request of the Executive]**

[Passed March 7, 2019; in effect from passage.]
[Approved by the Governor on March 14, 2019.]

AN ACT supplementing and amending by increasing an existing item of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Military Affairs and Public Safety, Division of Corrections, Correctional Units, Fund 0450, fiscal year 2019, organization

0608, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for the fiscal year 2019; and

Whereas, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to Fund 0450, fiscal year 2019, organization 0608, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

68 – Division of Corrections -

Correctional Units

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

Fund 0450 FY 2019 Org 0608

1			General
2			Revenue
3		Appro-	Fund
		priation	
4	4	Current Expenses (R).....	13000 \$20,609,836

●

CHAPTER 35

**(H. B. 2668 - By Hanshaw (Mr. Speaker) and
Delegate Miley)
[By Request of the Executive]**

[Passed February 21, 2019; in effect from passage.]
[Approved by the Governor on March 1, 2019.]

AN ACT supplementing and amending by increasing an existing item of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Administration, Public Defender Services, Fund 0226, fiscal year 2019, organization 0221, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for the fiscal year 2019; and

Whereas, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to Fund 0226, fiscal year 2019, organization 0221, be supplemented and amended by increasing an existing item of appropriation as follows:

2 **Section 1. Appropriations from general revenue.**

3 **DEPARTMENT OF ADMINISTRATION**

4 *27 – Public Defender Services*

5 (WV Code Chapter 29)

6 Fund 0226 FY 2019 Org 0221

7			General
8		Appro-	Revenue
9		priation	Fund

10	6	Appointed Counsel Fees (R)....	78800	\$ 15,300,000
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CHAPTER 36

**(H. B. 3135 - By Delegates Criss, Cowles, Ellington,
Espinosa, Hardy, Rowan, Barrett, Hartman,
Longstreth, Rowe and Williams)**

[Passed March 7, 2019; in effect from passage.]
[Approved by the Governor on March 14, 2019.]

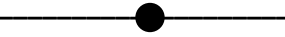
AN ACT expiring funds to the balance of the Department of Commerce, Development Office – Entrepreneurship and Innovation Investment Fund, fund 3014, fiscal year 2019, organization 0307, in the amount of \$500,000, from the Auditor’s Office – Purchasing Card Administration Fund, fund 1234, fiscal year 2019, organization 1200, by supplementing and amending chapter 12, Acts of the Legislature, 2018, known as the Budget Bill.

Whereas, The Legislature finds that the account balance in the Auditor’s Office – Purchasing Card Administration Fund, fund 1234, fiscal year 2019, organization 1200 exceeds that which is

necessary for the purpose for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending June 30, 2019, to the Auditor's Office – Purchasing Card Administration Fund, fund 1234, fiscal year 2019, organization 1200, be decreased by expiring the amount of \$500,000 to the Department of Commerce, Development Office – Entrepreneurship and Innovation Investment Fund, fund 3014, fiscal year 2019, organization 0307.



CHAPTER 37

**(Com. Sub. for H. B. 2982 - By Delegates Howell,
Hott, Pack, Cadle, C. Martin and Hamrick)**

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

AN ACT to amend and reenact §19-2C-1, §19-2C-2, §19-2C-3, §19-2C-5, §19-2C-5a, §19-2C-6, §19-2C-6a, §19-2C-6c, §19-2C-8, §19-2C-8a, §19-2C-9, and §19-2C-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §19-2C-5b, all relating to amending and updating the laws relating to auctioneers by providing for definitions; providing for certain exemptions to license requirements; providing for additional rule-making authority; providing for June 30 as the date all licenses expire; establishing certain conditions for auctioneers to continue working after license expiration; providing for record retention requirements; providing for exams held a minimum of two times each year; providing for applicants for auctioneer licenses to submit to background checks; providing for authorization to conduct and use information relating to

background checks; providing for confidentiality of background checks; establishing certain conditions for apprentice auctioneers to continue working after license expiration; adjusting residency requirements for members of the board of review; eliminating certain outdated language; providing for reciprocal licensure; increasing civil penalties for violations of this article; increasing penalties commissioner may be assessed against an unlicensed auctioneer; providing for additional circumstances to suspend, deny, or revoke a license; providing for written contracts with auctioneers and owners of property; providing for auction houses and business entities to enter into contracts with auctioneers and owners of property; and providing for certain unlawful advertising practices.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2C. AUCTIONEERS.

§19-2C-1. Definitions.

1 For the purposes of this article:

2 (a) “Absolute auction” means the sale of real or personal
3 property at auction whereby every item offered from the
4 block is sold to the highest bidder without reserve and
5 without the requirements of a minimum bid or other
6 conditions which limit the sale other than to the highest
7 bidder.

8 (b) “Auctioneer” means a person who sells goods or real
9 estate at public auction for another on commission or for
10 other compensation.

11 (c) “Commissioner” means the Commissioner of
12 Agriculture of West Virginia.

13 (d) “Department” means the West Virginia Department
14 of Agriculture.

15 (e) "Escrow account" means a separate custodial or trust
16 fund account maintained by the auctioneer.

17 (f) "Estate auction" means the sale at auction of property
18 of a specified deceased person or the property of a specified
19 living person's estate. Estate auctions may contain property
20 other than that of the specified living or deceased person.
21 However, the inclusion of additional property must be
22 included in all advertising and auction announcements.

23 (g) "In this state" means that an auction satisfies one of
24 the following criteria:

25 (1) The auctioneer performed the auction within the
26 borders of the State of West Virginia;

27 (2) The auctioneer is selling items for a person located
28 in the State of West Virginia;

29 (3) The auctioneer is auctioning real or personal
30 property located in the State of West Virginia;

31 (4) The auctioneer delivers purchased property to a
32 location in the State of West Virginia; or

33 (5) The auctioneer is otherwise subject to the laws,
34 including taxation authority, of the State of West Virginia.

35 (h) "Public auction" or "auction" means any public sale
36 of real or personal property in any manner, whether in-
37 person, via written offers or bids, or online, when offers or
38 bids are made by prospective purchasers and the property
39 sold to the highest bidder.

§19-2C-2. License required; exceptions.

1 (a) Except as provided in subsection (b) of this section,
2 no person shall conduct an auction as an auctioneer in this
3 state unless he or she shall have first obtained from the
4 commissioner a license therefor.

5 (b) The provisions of this section do not apply to:

6 (1) Persons conducting sales at auctions conducted by
7 or under the direction of any public authority or pursuant to
8 any judicial order or direction or to any sale required by law
9 to be at auction;

10 (2) The owner of any real or personal property when
11 personally sold at auction by the owner and the owner has
12 not personally conducted an auction within the previous 12-
13 month period;

14 (3) Persons conducting sales pursuant to a deed of trust;

15 (4) Fiduciaries of estates when selling real or personal
16 property of the estate;

17 (5) Persons conducting sales without compensation on
18 behalf of charitable, religious, fraternal, or other nonprofit
19 organizations: *Provided*, That the commissioner shall
20 promulgate rules to limit the number of charitable auctions
21 an exempt person may perform in a 12-month period;

22 (6) Persons properly licensed pursuant to the provisions
23 in §30-40-1 *et seq.* of this code when conducting an auction,
24 any portion of which contains any leasehold or any estate in
25 land whether corporeal or incorporeal, freehold or
26 nonfreehold, when the person is retained to conduct an
27 auction by a receiver or trustee in bankruptcy, a fiduciary
28 acting under the authority of a deed of trust or will, or a
29 fiduciary of a decedent's estate: *Provided*, That nothing
30 contained in this article exempts persons conducting sales at
31 public markets from the provisions of §19-2A-1 *et seq.* of
32 this code, where the sale is confined solely to livestock,
33 poultry, and other agriculture and horticulture products; and

34 (7) Persons listing items online for sale via a platform
35 that establishes a fixed time for the conclusion of the sale
36 without extension: *Provided*, That the commissioner may
37 further define this exemption in legislative rules.

**§19-2C-3. Procedure for license; Department of Agriculture
as statutory agent for licensees.**

1 (a) An applicant for an auctioneer license shall:

2 (1) Apply on forms prescribed by the commissioner;

3 (2) Pay a nonreturnable application fee and a license fee;
4 and, upon successful completion of the application process,
5 a license fee; and

6 (3) File a bond as required by this article.

7 (b) The commissioner shall, within 30 days after the
8 receipt of an application, notify the applicant of his or her
9 eligibility to be examined at the next regularly scheduled
10 examination, as well as the date of the examination.

11 (c) If the license is denied, the commissioner shall
12 refund the license fee submitted with the application to the
13 applicant.

14 (d) All licenses expire on June 30 of each year:
15 *Provided*, That an auctioneer may continue to perform
16 auctions for up to 30 days after June 30, so long as he or she
17 has submitted the required paperwork to renew his or her
18 auctioneer license: *Provided, however*, That licenses issued
19 in 2019 shall continue to be active through June 30, 2020.
20 A license may be renewed upon the payment of the annual
21 renewal fee within 60 days of the expiration date. Renewals
22 received more than 60 days after the expiration date are
23 subject to a late renewal fee in addition to the annual
24 renewal fee.

25 (e) A license that has been expired for more than two
26 years cannot be renewed until the auctioneer or apprentice
27 auctioneer takes the written and oral examination, pays the
28 examination fee and complies with the other requirements
29 of this article.

30 (f) Where an auctioneer or apprentice auctioneer
31 requires a duplicate or replacement license or a license
32 reflecting a change in information, the auctioneer or
33 apprentice auctioneer shall submit the fee with the request.

34 (g) The State Department of Agriculture is the agent for
35 the purpose of service of process on a licensed auctioneer
36 for any action occasioned by the performance of the duties
37 of the auctioneer. Every licensed auctioneer, by virtue of his
38 or her application for a license, shall be considered to have
39 consented to the statutory agency.

§19-2C-5. Requirements for auctioneer license; duties of licensee.

1 (a) A person seeking an auctioneer license shall submit
2 satisfactory evidence to the commissioner showing that he
3 or she:

4 (1) Has successfully completed the written and oral
5 examinations required by this article;

6 (2) Has a good reputation;

7 (3) Is of trustworthy character;

8 (4) Has met the apprenticeship requirements set forth in
9 this article, if applicable;

10 (5) Is a citizen of the United States; and

11 (6) Has a general knowledge of the auctioneering
12 profession and the principles involved in conducting an
13 auction.

14 (b) A licensee shall:

15 (1) Promptly produce for inspection his or her license at
16 all sales conducted by or participated in by the licensee
17 when requested to do so by any person; and

18 (2) Keep complete and accurate records of all
19 transactions engaged in for a period of three years from the
20 date on which the sale was completed.

21 (c) For the purposes of this section, the term “record”
22 includes, but is not limited to:

23 (1) Copies of signed contracts, including the names of
24 buyers and their addresses;

25 (2) Clerk sheets showing items sold, including buyers
26 numbers or names, and the selling prices; and

27 (3) Final settlement papers.

28 (d) The records of the auctioneer shall be open to
29 inspection by the commissioner or his or her authorized
30 representative.

31 (e) A person who has an auctioneer license is considered
32 to be a professional in his or her trade.

§19-2C-5a. Examinations of applicants.

1 (a) Examinations shall be held a minimum of two times
2 each year, at a time and place to be designated by the
3 commissioner or his or her authorized representative.

4 (b) An individual auctioneer applicant may take the
5 examination for auctioneer or apprentice auctioneer at the
6 regularly scheduled time and place.

7 (c) The apprentice auctioneer's examination shall
8 consist of a written examination.

9 (d) The auctioneer's examination shall consist of both a
10 written and oral examination. The passing grade for any
11 written or oral examination shall be 70 percent out of 100
12 percent. The oral portion will be scored by the
13 commissioner or his or her authorized representative.

14 (e) If the applicant fails either the written or oral portion
15 of the examination, no license will be issued and he or she
16 may not be administered the examination again until the
17 next regularly scheduled examination date.

18 (f) Only one notice of the examination will be mailed or
19 emailed to the applicant at the address given on the
20 application. If the applicant fails to appear for an

21 examination, except as provided in this subsection, a new
22 application and a new fee shall be required. No fee will be
23 returned, except when the applicant fails to take the
24 examination because of illness evidenced by a doctor's
25 certificate sent to the commissioner. If excused because of
26 illness, the applicant shall be admitted to the next scheduled
27 examination without paying an additional fee. No applicant
28 may be excused from taking the scheduled examination for
29 any reason other than illness, unless in the judgment of the
30 commissioner the applicant would suffer undue hardship by
31 not being excused.

32 (g) An examination fee and any other fees required by
33 this article, shall be collected from each person taking an
34 examination. If the applicant has previously paid the
35 examination fee and successfully completed the apprentice
36 auctioneer's examination, no additional examination fee
37 will be required to take the auctioneer's examination.

38 (h) If the commissioner determines that an applicant
39 does not qualify for a license, he or she shall notify the
40 applicant by certified mail. The notice shall state:

41 (1) The reason for the refusal to grant a license; and

42 (2) The applicant's right to appeal the commissioner's
43 decision within 20 days of receipt of the notice.

44 (i) An examination is not required for the renewal of a
45 license, unless the license has been revoked or suspended,
46 or has expired. If the license was revoked or suspended, then
47 the commissioner may require a person to take and pass a
48 written or oral examination. If a license has been expired for
49 more than two years and was not revoked or suspended, then
50 the applicant is required to take and pass any written and
51 oral examinations required by the commissioner.

§19-2C-5b. Background checks required.

1 (a) A person applying for a license pursuant to §19-2C-
2 5, §19-2C-6, or §19-2C-6c of this code may be required to

3 submit to a state and national criminal history record check.
4 The criminal history record check shall be based on
5 fingerprints submitted to the West Virginia State Police or
6 its assigned agent for forwarding to the Federal Bureau of
7 Investigation.

8 (b) The applicant shall meet all requirements necessary
9 to accomplish the state and national criminal history record
10 check, including:

11 (1) Submitting fingerprints for the purposes set forth in
12 this subsection; and

13 (2) Authorizing the board, the West Virginia State
14 Police, and the Federal Bureau of Investigation to use all
15 records submitted and produced for the purpose of
16 screening the applicant for a license.

17 (c) The results of the state and national criminal history
18 record check may not be released to or by a private entity
19 except:

20 (1) To the individual who is the subject of the criminal
21 history record check;

22 (2) With the written authorization of the individual who
23 is the subject of the criminal history record check; or

24 (3) Pursuant to a court order.

25 (d) The criminal history record check and related
26 records are not public records for the purposes of chapter
27 29B of this code.

28 (e) The applicant shall pay the actual costs of the
29 fingerprinting and criminal history record check.

30 (f) The commissioner may not disqualify an applicant
31 for initial licensure, certification or registration because of
32 a prior criminal conviction that has not been reversed unless

33 that conviction is for a crime that bears a rational nexus to
34 the occupation requiring licensure.

35 (g) The commissioner may not use crimes involving
36 moral turpitude in making licensure, certification or
37 registration determinations.

38 (h) If an applicant is disqualified for licensure,
39 certification or registration because of a criminal conviction
40 that has not been reversed, the commissioner shall afford the
41 applicant the opportunity to reapply for licensure,
42 certification or registration after the expiration of five years
43 from the date of conviction or date of release from the
44 penalty that was imposed, whichever is later, if the
45 individual has not been convicted of any other crime during
46 that period of time: *Provided*, That convictions for violent
47 or sexual offenses or offenses shall subject an individual to
48 a longer period of disqualification, to be determined by the
49 individual board or licensing authority.

50 (i) An individual with a criminal record who has not
51 previously applied for licensure, certification or registration
52 may petition the commissioner at any time for a
53 determination of whether the individual's criminal record
54 will disqualify the individual from obtaining a license or
55 other authorization. This petition shall include sufficient
56 details about the individual's criminal record to enable the
57 commissioner to identify the jurisdiction where the
58 conviction occurred, the date of the conviction and the
59 specific nature of the conviction. The commissioner shall
60 inform the individual of his or her standing within 60 days
61 of receiving the petition from the applicant. The licensing
62 authority may charge a fee to recoup its costs for each
63 petition.

64 (j) Nothing in this section alters the standards and
65 procedures the commissioner uses for evaluating licensure,
66 certification or registration renewals.

67 (k) The commissioner shall propose rules or
68 amendments to existing rules for legislative approval to
69 comply with the provisions of this section. These rules or
70 amendments to rules shall be proposed pursuant to the
71 provisions of §29A-3-1 *et seq.* of this code within the
72 applicable time limit to be considered by the Legislature
73 during its regular session in the year 2020.

74 (l) The provisions of this section, enacted during the
75 2019 Regular Session of the Legislature, shall not apply to
76 current licensees who maintain active licensure, but shall
77 apply to individuals currently holding an apprentice
78 auctioneer license who are applying for an auctioneer
79 license, or to any current license holder whose license lapses
80 and who is required to reapply.

§19-2C-6. Requirements for apprentice auctioneer license.

1 (a) A person seeking an apprentice auctioneer license
2 shall furnish to the commissioner, on forms provided by the
3 commissioner, satisfactory proof that he or she:

4 (1) Has a good reputation;

5 (2) Is a trustworthy character;

6 (3) Is a citizen of the United States; and

7 (4) Has taken and passed a written examination relating
8 to the skills and knowledge of the statutes and rules
9 governing auctioneers.

10 (b) An apprentice auctioneer may take the examination
11 to become an auctioneer after completing one of the
12 following:

13 (1) Serving a two-year apprenticeship under a licensed
14 auctioneer; or

15 (2) Attending a nationally accredited graduate school of
16 auctioneering, approved by the commissioner, and serving
17 an apprenticeship of six months.

18 (c) Before an apprentice auctioneer may take the
19 auctioneer's examination, the apprentice auctioneer shall
20 conduct at least six auction sales under the direct
21 supervision of the sponsoring auctioneer. The commissioner
22 may waive the requirements of this section, on an individual
23 basis, upon the presentation of written evidence that the
24 applicant has educational training or exceptional experience
25 in the auctioneering profession and that the applicant has
26 been unable to obtain sponsorship by a licensed auctioneer:
27 *Provided*, That the commissioner may not waive
28 apprenticeship requirements for an applicant without the
29 concurrence of the board of review.

30 (d) When an apprentice auctioneer is discharged or
31 terminates his or her employment with an auctioneer for any
32 reason, the auctioneer shall immediately provide written
33 notification to the commissioner. No discharged or
34 terminated apprentice auctioneer may thereafter perform
35 any acts under the authority of his or her license until the
36 apprentice auctioneer receives a new license bearing the
37 name and address of his or her new employer. No more than
38 one license may be issued to an apprentice auctioneer for
39 the same period of time.

40 (e) The commissioner may not issue an apprentice
41 auctioneer license until bond has been filed. All apprentice
42 auctioneer licenses expire on June 30 of each year, but are
43 renewable upon the payment of the annual fee: *Provided*,
44 That an apprentice auctioneer may continue to perform
45 auctions for up to 20 days after June 30, so long as he or she
46 has submitted the required paperwork to renew his or her
47 apprentice auctioneer license: *Provided, however*, That
48 licenses issued in 2019 shall continue to be active through
49 June 30, 2020.

50 (f) A person cannot be licensed as an apprentice
51 auctioneer for more than three years without applying for an
52 auctioneer license. Should an apprentice auctioneer allow
53 the three year limit to lapse, then the apprentice auctioneer

54 shall be required to take the apprentice examination and
55 meet all the requirements of this article.

§19-2C-6a. Investigation of complaints; board of review.

1 (a) The Department of Agriculture may, upon its own
2 action, and shall upon the verified written complaint of any
3 person, investigate the actions of any auctioneer, apprentice
4 auctioneer, any applicant for an auctioneer's or apprentice
5 auctioneer's license, or any person who assumes to act in
6 that capacity, if the complaint, together with other evidence
7 presented in connection with it, establishes probable cause.
8 Upon verification of the complaint, the department shall
9 present the complaint to the board of review. The board of
10 review shall consider all of the facts of the complaint and
11 recommend a course of action to the commissioner.

12 (b) The board of review shall be appointed by the
13 Governor, by and with the advice and consent of the Senate,
14 and shall consist of three members, each appointed for a
15 staggered three-year term. Two members of the board of
16 review shall be licensed auctioneers in West Virginia and
17 residents of this state and shall have been licensed and been
18 practicing the profession of auctioneering for five years
19 immediately preceding their appointment. The third
20 member shall be a lay person from the commercial or
21 agricultural community who has utilized services of
22 auctioneers for at least three years. No more than two board
23 members shall be from any one congressional district and
24 no more than two members shall be from the same political
25 party. Board members shall receive no compensation for
26 their service on the board, but shall be entitled to receive
27 reimbursement for expenses in accordance with the
28 Department of Agriculture travel regulations. There shall be
29 no limit on the number of consecutive terms a member may
30 serve on the board. The Governor is authorized to fill a
31 vacancy when it occurs on the board for any reason. An
32 appointment to fill a vacancy shall be for the remainder of
33 the existing term of the vacant position.

§19-2C-6c. Procedure for obtaining reciprocal or nonresident auctioneer's and apprentice auctioneer's license.

1 (a) To qualify for a license by reciprocity, the applicant
2 must show evidence of licensing in another state for a period
3 of one year preceding the date of application. The licensing
4 may have been as an apprentice auctioneer or as an
5 auctioneer. Provided this qualification is met and the
6 applicant meets all the other requirements as required by
7 this article and by regulation, he or she shall be licensed
8 either as an apprentice auctioneer or as an auctioneer, based
9 on a nonresident license, as the case may be.

10 (b) When an applicant's resident state has no licensing
11 law for auctioneers or the applicant's resident state has no
12 written or oral examination associated with its licensing
13 requirements, the Department of Agriculture shall require
14 proof that the applicant has been a practicing auctioneer for
15 a period of two years preceding the date of application. The
16 proof shall be in the form of sale bills, contracts, sale
17 permits and other such evidence acceptable to the
18 commissioner. Provided this qualification is met, and the
19 applicant meets other requirements for licensing as required
20 by the statutes and regulations, the applicant shall be
21 admitted to the next scheduled written and oral examination
22 for auctioneers without being required to first serve an
23 apprenticeship.

§19-2C-8. Penalties.

1 (a) *Criminal penalties.* — Any person, firm, association
2 or corporation violating a provision of this article or the
3 rules, is guilty of a misdemeanor and, upon conviction, shall
4 be fined not less than \$250 nor more than \$500 for the first
5 offense, and not less than \$500 nor more than \$1,000 for the
6 second and subsequent offenses. Magistrates have
7 concurrent jurisdiction with circuit courts to enforce the
8 provisions of this article.

9 (b) *Civil penalties.* — Any person violating a provision
10 of this article or the rules, may be assessed a civil penalty
11 by the commissioner.

12 (1) In determining the amount of the civil penalty, the
13 commissioner shall give due consideration to the history of
14 previous violations by the person, the seriousness of the
15 violation, and the demonstrated good faith of the person
16 charged in attempting to achieve compliance with this
17 article before and after written notification of the violation.
18 The commissioner may assess a penalty of not more than
19 \$500 for a first offense, and not more than \$1,000 for each
20 second and subsequent offense.

21 (2) In addition to a penalty assessed against an
22 unlicensed auctioneer for practicing without the required
23 license, the commissioner may assess penalties against an
24 unlicensed auctioneer for violations of the provisions of this
25 article that would have applied to the individual's conduct
26 had he or she held the required license.

27 (3) The civil penalty is payable to the State of West
28 Virginia and is collectible in any manner provided for
29 collection of debt. If any person liable to pay the civil
30 penalty neglects or refuses to pay the penalty, the amount of
31 the civil penalty, together with interest at 10 percent, is a
32 lien in favor of the State of West Virginia upon the property,
33 both real and personal, of the person after the same has been
34 entered and docketed to record in the county where the
35 property is situated. The clerk of the county, upon receipt of
36 the certified copy of the lien, shall enter it to record without
37 requiring the payment of costs as a condition precedent to
38 recording.

39 (c) No state court may allow for the recovery of
40 damages for any administrative action taken if the court
41 finds that there was probable cause for such action.

§19-2C-8a. Revocation.

1 In addition to the penalties in section eight of this article,
2 the commissioner may, by order, suspend, deny or revoke
3 any license granted hereunder for any violation of this
4 article or the rules and regulations promulgated hereunder
5 or for any of the following reasons:

6 (a) Obtaining a license through false or fraudulent
7 representation;

8 (b) Making any substantial misrepresentation in any
9 application for an auctioneer's or apprentice auctioneer's
10 license;

11 (c) Engaging in a continued or flagrant course of
12 misrepresentation or for making false promises through an
13 agent, advertisement or otherwise;

14 (d) Failing to account for or remit within a reasonable
15 time any money belonging to others that comes into his or
16 her possession;

17 (e) Being convicted in any court of competent
18 jurisdiction of this state or any other state of a criminal
19 offense involving moral turpitude or a felony; or for failing
20 to notify the department of any such conviction within 15
21 days of conviction;

22 (f) Violating any other laws related to the conduct of
23 auctions or auctioneering;

24 (g) Engaging in any conduct of an auctioneer which
25 demonstrates dishonesty or incompetency;

26 (h) Engaging in any other conduct that constitutes
27 fraudulent or dishonest dealing;

28 (i) Engaging in any other unethical conduct in the
29 contexts of his or her work as an auctioneer; and

30 (j) Acting as an attorney for a client.

31 Any auctioneer or apprentice auctioneer who has had
32 his or her license suspended or revoked shall not be issued
33 another such license until a period not to exceed two years
34 has elapsed from the date of revocation. The commissioner
35 may also require the successful completion of the
36 examinations required for an auctioneer's license or an
37 apprentice auctioneer's license.

§19-2C-9. Written contracts.

1 (a) No person may act as an auctioneer on the sale at
2 public auction of any goods, wares, merchandise or of any
3 other property, real or personal, until he or she has entered
4 into a written contract in duplicate with the owner or
5 consignor of the property to be sold. No apprentice
6 auctioneer may be authorized to enter into a contract
7 without the written consent of his or her sponsoring
8 auctioneer. All contracts shall be in the name of and on
9 behalf of the sponsoring auctioneer.

10 (b) The written contract shall:

11 (1) State the terms and conditions upon which the
12 auctioneer receives or accepts the property for sale at
13 auction;

14 (2) Be between the auctioneer and the seller;

15 (3) Be made in duplicate;

16 (4) Be retained by the auctioneer for a period of three
17 years from the date of final settlement;

18 (5) Be furnished to each person that entered into the
19 contract;

20 (6) State that an apprentice auctioneer may not contract
21 directly with a client but only through his or her sponsoring
22 auctioneer;

23 (7) State that an apprentice auctioneer may not engage
24 in a sale with an auctioneer by whom he or she is not
25 sponsored without first obtaining the written consent of his
26 or her sponsoring auctioneer;

27 (8) Have a prominent statement indicating that the
28 auctioneer is licensed by the Department of Agriculture and
29 is bonded in favor of the State of West Virginia; and

30 (9) Include the following information:

31 (A) The name, address and phone number of the owner
32 of the property to be sold or the consignor;

33 (B) The date of the auction or a termination date of the
34 contract;

35 (C) The terms and conditions of the auction;

36 (D) The location of the auction;

37 (E) The date the owner or consignor is to be paid;

38 (F) A statement establishing the responsibility for bad
39 checks, debts and unpaid auction items;

40 (G) A detailed list of all fees to be charged by the
41 auctioneer, including commissions, rentals, advertising and
42 labor;

43 (H) A statement of the auctioneer's policy regarding
44 absentee bidding;

45 (I) A statement above the owner's signature line: "I have
46 read and accept the terms of the contract"; and

47 (J) A statement indicating that an explanation of
48 settlement of the auction, or settlement sheet, will be
49 provided to the owner or consignor at the end of the auction.

50 (c) As a condition of entering into a contract, the
51 auctioneer shall be provided with proof or certificate of

52 ownership for all titled property, or assurances of ownership
53 for all other property. The auctioneer shall have such proof
54 or certificate or ownership with him or her at the time the
55 auction is held.

56 (d) Notwithstanding the provisions of subsection (a) of
57 this section, an auctioneer may conduct an auction on behalf
58 of an auction house or other business entity without having
59 entered into a contract directly with the seller of the
60 auctioned goods, so long as the following conditions are
61 satisfied:

62 (1) The auction house or business must have a written
63 contract with both the seller of the goods and the auctioneer;

64 (2) The contract between the auction house or business
65 entity must satisfy all the requirements set forth in
66 subsection (b) of this section; and

67 (3) The auction house or business entity must file with
68 the commissioner a bond satisfying the requirements of
69 §19-2C-4 of this code.

70 (e) By entering into contracts with sellers of property
71 pursuant to this section, the owners and partners of any auction
72 house or business entity agree to submit to the jurisdiction of
73 the commissioner and the Board of Review and are subject to
74 the penalties set forth in §19-2C-8 of this code.

§19-2C-10. Advertising.

1 In advertising an auction sale by any licensed
2 auctioneer, the principal auctioneer or auctioneers who
3 physically conduct the sale shall be listed prominently in
4 such advertising as used by said auctioneer or auctioneers.
5 The individual auctioneer or auctioneers who conduct the
6 sale shall be the person or persons who call for, accept and
7 close bids on the majority of items offered for sale.

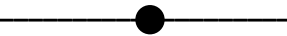
8 Any apprentice auctioneer who advertises, as provided
9 in this section, shall indicate in his or her advertisement the
10 name of the sponsoring auctioneer under whom he or she is
11 licensed.

12 The auctioneer's name and license number shall be
13 displayed in equal prominence with the name of the
14 apprentice auctioneer and license number in such
15 advertisement.

16 Nothing in the provisions of this article shall be
17 construed so as to prohibit any other auctioneer, licensed
18 pursuant to this article, from assisting with any auction,
19 notwithstanding the failure to list the name of the other
20 auctioneer in any advertising associated with such auction.

21 It is unlawful to conduct or advertise that an auction is
22 absolute if minimum opening bids are required or other
23 conditions are placed on the sale that limit the sale other
24 than to the highest bidder.

25 No property other than the property of a specified
26 deceased person or the property of a specified living
27 person's estate may be sold at auction if the auction is
28 conducted or advertised only as an estate auction. However,
29 property other than that of the specified estate may be sold
30 at the sale if all advertisements for the sale specify that items
31 will be sold that do not belong to the estate and those items
32 are identified at the sale.



CHAPTER 38

(S. B. 453 - By Senators Azinger and Cline)

[Passed March 1, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §31A-2-4 of the Code of West Virginia, 1931, as amended, relating to background checks of certain financial institutions; allowing commissioner to accept alternate report forms in limited circumstances for certain

non-United States based principals or owners; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. DIVISION OF FINANCIAL INSTITUTIONS.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of division transferred to commissioner; powers and duties of commissioner.

1 (a) Subject to the powers vested in the board by §31A-
2 3-1 *et seq.* of this code, the commissioner has supervision
3 and jurisdiction over state banks, regulated consumer
4 lenders, residential mortgage lenders, and brokers licensed
5 pursuant to §31-17-1 *et seq.* of this code, credit unions, and
6 all other persons now or hereafter made subject to his or her
7 supervision or jurisdiction. All powers, duties, rights, and
8 privileges vested in the division are hereby vested in the
9 commissioner. He or she shall be the chief executive officer
10 of the Division of Financial Institutions and is responsible
11 for the division's organization, services, and personnel and
12 for the orderly and efficient administration, enforcement,
13 and execution of the provisions of this chapter and all laws
14 vesting authority or powers in, or prescribing duties or
15 functions for, the division or the commissioner.

16 (b) The commissioner shall:

17 (1) Maintain an office for the division and there keep a
18 complete record of all the division's transactions, of the
19 financial conditions of all financial institutions, and records
20 of the activities of other persons as the commissioner
21 considers important. Notwithstanding any other provision
22 of this code, heretofore or hereafter enacted, the records
23 relating to the financial condition of any financial institution
24 and any information contained in the records shall be
25 confidential for the use of the commissioner and authorized
26 personnel of the Division of Financial Institutions. No
27 person shall divulge any information contained in any
28 records except as authorized in this subdivision in response

29 to a valid subpoena or subpoena duces tecum issued
30 pursuant to law in a criminal proceeding or in a civil
31 enforcement action brought by the state or federal
32 regulatory authorities. Subpoenas shall first be directed to
33 the commissioner, who shall authorize disclosure of
34 relevant records and information from the records for good
35 cause, upon imposing terms and conditions considered
36 necessary to protect the confidential nature of the records,
37 the financial integrity of the financial institution, or the
38 person to which the records relate, and the legitimate
39 privacy interests of any individual named in the records.
40 Conformity with federal procedures shall be sought where
41 the institution maintains federal deposit insurance. The
42 commissioner has and may exercise reasonable discretion
43 as to the time, manner, and extent the other records in his or
44 her office and the information contained in the records are
45 available for public examination;

46 (2) Require all financial institutions to comply with all
47 the provisions of this chapter and other applicable laws, or
48 any rule promulgated or order issued thereunder;

49 (3) Investigate all alleged violations of this chapter and
50 all other laws which he or she is required to enforce and of
51 any rule promulgated or order issued thereunder; and

52 (4) Require a criminal background investigation,
53 including requiring fingerprints for submission to the
54 Federal Bureau of Investigation or any governmental
55 agency or entity authorized to receive such information for
56 a state, national, or international criminal history check, of
57 each:

58 (A) Applicant seeking approval to charter and/or control
59 a state bank, state credit union, or a foreign bank state
60 agency or representative office;

61 (B) Applicant seeking a license to engage in the
62 business of money transmission, currency exchange, or
63 other activity regulated under §32A-2-1 *et seq.* of this code;

64 (C) Applicant subject to the commissioner's supervision
65 seeking a license to engage in the business of regulated
66 consumer lending, mortgage lending, or brokering; and

67 (D) Division of Financial Institutions regulatory
68 employee applicants.

69 (E) The provisions of this subdivision are not applicable
70 where the applicant is a company or entity already subject
71 to supervision and regulation by the Federal Reserve Board
72 or other federal bank, thrift, or credit union regulator, or is
73 a direct or indirect subsidiary of a company or entity subject
74 to the supervision and regulation, or where the applicant is
75 a company subject to the supervision and regulation of the
76 federal Securities and Exchange Commission whose stock
77 is publicly traded on a registered exchange or through the
78 National Association of Securities Dealers automated
79 quotation system, or the applicant is a direct or indirect
80 subsidiary of such a company, the investigation into
81 criminal background is not required. The provisions of this
82 subdivision are not applicable to applicants seeking interim
83 bank charters organized solely for the purpose of facilitating
84 the acquisition of another bank pursuant to §31A-4-5 of this
85 code. The requirements of this subdivision are applicable to
86 the principals of the applicant where a nonexempt applicant
87 under this subdivision is not a natural person. As used in this
88 subdivision, the term "principals" means the chief executive
89 officer, regardless of title, managing partner if a partnership,
90 members of the organizing group if no chief executive
91 officer has yet been appointed, trustee, or other person
92 controlling the conduct of the affairs of a licensee. A person
93 controlling 10 percent or more of the stock of any corporate
94 applicant shall be considered to be a principal under this
95 provision. Notwithstanding any other provision of this code
96 to the contrary, the commissioner may determine alternate
97 acceptable forms for background check information for
98 direct or indirect principals of a licensee or applicant for a
99 mortgage lender or broker license or a money transmission
100 license who are not residents of the United States if such

101 licensee or applicant also has owners or principals who are
102 residents of the United States and the division has been
103 provided adequate background information, as provided in
104 this subdivision, for such owners or principals of the
105 licensee or applicant who are United States residents. The
106 commissioner may establish relationships or contracts with
107 the Nationwide Mortgage Licensing System and Registry or
108 other entities designated by the Nationwide Mortgage
109 Licensing System and Registry to collect and maintain
110 records related to criminal background investigations and
111 fingerprints of persons subject to this subsection.

112 To reduce the points of contact which the Federal
113 Bureau of Investigation may have to maintain, the
114 commissioner may use the Nationwide Mortgage Licensing
115 System and Registry or its designated vendor as a
116 channeling agent for requesting information from and
117 distributing information to the Department of Justice or any
118 governmental agency.

119 To reduce the points of contact which the commissioner
120 may have to maintain, the commissioner may use the
121 Nationwide Mortgage Licensing System and Registry as a
122 channeling agent for requesting and distributing
123 information to and from any source so directed by the
124 commissioner.

125 (c) In addition to all other authority and powers vested
126 in the commissioner by provisions of this chapter and other
127 applicable laws, the commissioner may:

128 (1) Provide for the organization of the division and the
129 procedures and practices of the division and implement the
130 procedures and practices by the promulgation of rules and
131 forms as appropriate and the rules shall be promulgated in
132 accordance with §29A-3-1 *et seq.* of this code;

133 (2) Employ, direct, discipline, discharge, and establish
134 qualifications and duties for all personnel for the division,
135 including, but not limited to, examiners, assistant

136 examiners, conservators, and receivers, establish the
137 amount and condition of bonds for the personnel he or she
138 considers appropriate and pay the premiums on the bonds
139 and, if he or she elects, have all personnel subject to and
140 under the classified service of the state personnel division;

141 (3) Cooperate with organizations, agencies, committees,
142 and other representatives of financial institutions of the state
143 in connection with schools, seminars, conferences, and
144 other meetings to improve the responsibilities, services, and
145 stability of the financial institutions;

146 (4) In addition to the examinations required by §31A-2-
147 6 of this code, inspect, examine, and audit the books,
148 records, accounts, and papers of all financial institutions and
149 any third-party vendor providing information technology
150 services to financial institutions at such times as
151 circumstances in his or her opinion may warrant;

152 (5) Call for and require any data, reports, and
153 information from financial institutions under his or her
154 jurisdiction, at such times and in such form, content, and
155 detail considered necessary by him or her in the faithful
156 discharge of his or her duties and responsibilities in the
157 supervision of the financial institutions;

158 (6) Subject to the powers vested in the board by §31A-
159 3-1 *et seq.* of this code, supervise the location, organization,
160 practices, and procedures of financial institutions and,
161 without limitation on the general powers of supervision of
162 financial institutions, require financial institutions to:

163 (A) Maintain their accounts consistent with rules
164 prescribed by the commissioner and in accordance with
165 generally accepted accounting practices;

166 (B) Observe methods and standards which he or she
167 may prescribe for determining the value of various types of
168 assets;

169 (C) Charge off the whole or any part of an asset which
170 at the time of his or her action could not lawfully be
171 acquired;

172 (D) Write down an asset to its market value;

173 (E) Record or file writings creating or evidencing liens
174 or other interests in property;

175 (F) Obtain financial statements from prospective and
176 existing borrowers;

177 (G) Obtain insurance against damage and loss to real
178 estate and personal property taken as security;

179 (H) Maintain adequate insurance against other risks as
180 he or she may determine to be necessary and appropriate for
181 the protection of depositors and the public;

182 (I) Maintain an adequate fidelity bond or bonds on its
183 officers and employees;

184 (J) Take other action that in his or her judgment is
185 required of the institution in order to maintain its stability,
186 integrity, and security as required by law and all rules
187 promulgated by him or her; and

188 (K) Verify any or all asset or liability accounts;

189 (7) Subject to the powers vested in the board by §31A-
190 3-1 *et seq.* of this code, receive from any person or persons
191 and consider any request, petition, or application relating to
192 the organization, location, conduct, services, policies, and
193 procedures of any financial institution and to act on the
194 request, petition, or application in accordance with any
195 provisions of law applicable thereto;

196 (8) In connection with the investigations required by
197 §31A-2-4(b)(3) of this code, issue subpoenas and subpoenas
198 duces tecum, administer oaths, examine persons under oath,
199 and hold and conduct hearings. Any subpoenas or

200 subpoenas duces tecum shall be issued, served, and
201 enforced in the manner provided in §29A-5-1 of this code.
202 Any person appearing and testifying at a hearing may be
203 accompanied by an attorney employed by him or her;

204 (9) Issue declaratory rulings in accordance with the
205 provisions of §29A-4-1 of this code;

206 (10) Study and survey the location, size, and services of
207 financial institutions, the geographic, industrial, economic,
208 and population factors affecting the agricultural,
209 commercial, and social life of the state, and the needs for
210 reducing, expanding, or otherwise modifying the services
211 and facilities of financial institutions in the various parts of
212 the state, and compile and keep current data thereon to aid
213 and guide him or her in the administration of the duties of
214 his or her office;

215 (11) Implement all of the provisions of this chapter,
216 except the provisions of §31A-3-1 *et seq.* of this code, and
217 all other laws which he or she is empowered to administer
218 and enforce by the promulgation of rules in accordance with
219 the provisions of §29A-3-1 *et seq.* of this code;

220 (12) Implement the provisions of chapter 46A of this
221 code applicable to consumer loans and consumer credit
222 sales by the promulgation of rules in accordance with the
223 provisions of §29A-3-1 *et seq.* of this code as long as the
224 rules do not conflict with any rules promulgated by the
225 state's Attorney General;

226 (13) Foster and encourage a working relationship
227 between the Division of Financial Institutions and financial
228 institutions, credit, consumer, mercantile, and other
229 commercial and finance groups and interests in the state in
230 order to make current appraisals of the quality, stability, and
231 availability of the services and facilities of financial
232 institutions;

233 (14) Provide to financial institutions and the public
234 copies of the West Virginia statutes relating to financial
235 institutions, suggested drafts of bylaws commonly used by
236 financial institutions, and any other forms and printed
237 materials found by him or her to be helpful to financial
238 institutions, their shareholders, depositors, and patrons and
239 make reasonable charges for the copies;

240 (15) Delegate the powers and duties of his or her office,
241 other than the powers and duties excepted in this
242 subdivision, to qualified division personnel who shall act
243 under the direction and supervision of the commissioner and
244 for whose acts he or she is responsible, but the
245 commissioner may delegate to the deputy commissioner of
246 financial institutions and to no other division personnel the
247 following powers, duties, and responsibilities, all of which
248 are hereby granted to and vested in the commissioner and
249 for all of which the commissioner also is responsible. The
250 commissioner shall:

251 (A) Order any person to cease violating any provision
252 or provisions of this chapter or other applicable law or any
253 rule promulgated or order issued thereunder;

254 (B) Order any person to cease engaging in any unsound
255 practice or procedure which may detrimentally affect any
256 financial institution or depositor of the financial institution;

257 (C) Revoke the certificate of authority, permit, or
258 license of any financial institution except a banking
259 institution in accordance with the provisions of §31A-2-13
260 of this code; and

261 (D) Accept an assurance in writing that the person will
262 not in the future engage in the conduct alleged by the
263 commissioner to be unlawful, which could be subject to an
264 order under the provisions of this chapter. This assurance of
265 voluntary compliance shall not be considered an admission
266 of violation for any purpose, except that if a person giving
267 the assurance fails to comply with its terms, the assurance is

268 prima facie evidence that prior to this assurance the person
269 engaged in conduct described in the assurance;

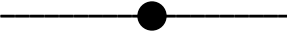
270 (16) Seek and obtain civil administrative penalties
271 against any person who violates this chapter, the rules
272 issued pursuant to this chapter, or any orders lawfully
273 entered by the commissioner or Board of Banking and
274 Financial Institutions in an amount not more than \$5,000 per
275 day for each violation: *Provided*, That all of the pertinent
276 provisions of §29A-5-1 *et seq.* of this code shall apply to
277 any assessment of a penalty under this subsection;

278 (17) Receive from state banking institutions
279 applications to change the locations of their principal offices
280 and to approve or disapprove these applications;

281 (18) Expend funds in order to promote consumer
282 awareness and understanding of issues related to residential
283 mortgage lending. In furtherance of this duty, there is
284 established in the State Treasury a special revenue account
285 to be known as the Consumer Education Fund, which shall
286 be administered by the Commissioner of Financial
287 Institutions. Ten percent of all civil administrative penalties
288 collected by the Division of Financial Institutions during
289 each fiscal year shall be deposited into the fund and may be
290 expended by the commissioner to promote consumer
291 awareness and understanding of issues related to residential
292 mortgage lending. The account shall be a special revenue
293 account and may be invested and retain all earnings and
294 interest. Any remaining balance less than \$500,000,
295 including accrued interest, in the fund at the end of the fiscal
296 year shall not revert to the General Revenue Fund, but shall
297 remain in the account. Any balance which exceeds
298 \$500,000 as of June 30, 2012, and each year thereafter, shall
299 revert to the General Revenue Fund; and

300 (19) Take other action as he or she may consider
301 necessary to enforce and administer the provisions of this
302 chapter, except the provisions of §31A-3-1 *et seq.* of this
303 code, and all other laws which he or she is empowered to

304 administer and enforce and apply to any court of competent
305 jurisdiction for appropriate orders, writs, processes, and
306 remedies.



CHAPTER 39

(Com. Sub. for S. B. 603 - By Senator Tarr)

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

AN ACT to amend and reenact §32A-2-3 of the Code of West Virginia, 1931, as amended, relating to persons engaged in the business of currency exchange, transportation, or transmission; and adding exemptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.

§32A-2-3. Exemptions.

1 (a) The following are exempt from the provisions of this
2 article:

3 (1) Banks, trust companies, foreign bank agencies,
4 credit unions, savings banks, and savings and loan
5 associations authorized to do business in the state or which
6 qualify as federally insured depository institutions, whether
7 organized under the laws of this state, any other state, or the
8 United States;

9 (2) The United States and any department or agency of
10 the United States;

- 11 (3) The United States Postal Service;
- 12 (4) This state and any political subdivision of this state;
- 13 (5) The provision of electronic transfer of government
14 benefits for any federal, state, or county governmental
15 agency as defined in Federal Reserve Board Regulation E,
16 by a contractor for and on behalf of the United States or any
17 department, agency, or instrumentality of the United States,
18 or any state or any political subdivisions of a state;
- 19 (6) Persons engaged solely in the business of currency
20 transportation who operate an armored car service in this
21 state pursuant to licensure under §30-18-1 *et seq.* of this
22 code: *Provided*, That the net worth of the licensee exceeds
23 \$5 million. The term “armored car service” as used in this
24 article means a service provided by a person transporting or
25 offering to transport, under armed security guard, currency
26 or other things of value in a motor vehicle specially
27 equipped to offer a high degree of security. Persons seeking
28 to claim this exemption shall notify the commissioner of
29 their intent to do so and demonstrate that they qualify for its
30 use. Persons seeking an exemption under this subdivision
31 are not exempt from the provisions of this article if they also
32 engage in currency exchange or currency transmission;
- 33 (7) Persons engaged in the business of currency
34 transportation whose activities are limited exclusively to
35 providing services to federally insured depository
36 institutions, or to any federal, state, or local governmental
37 entities;
- 38 (8) Persons engaged solely in the business of removing
39 currency from vending machines providing goods or
40 services, if the machines are not used for gambling purposes
41 or to convey any gambling ticket, token, or other device
42 used in a game of chance;
- 43 (9) The State Regulatory Registry, LLC, which
44 administers the Nationwide Mortgage Licensing System

45 and Registry on behalf of states and federal banking
46 regulators;

47 (10) The North American Securities Administrators
48 Association and any subsidiaries, which administer the
49 Electronic Filing Depository system on behalf of state
50 securities regulators; and

51 (11)(A) Persons operating a payment system that
52 provides processing, clearing, or settlement services,
53 between or among persons who are all excluded by this
54 section, in connection with wire transfers, credit card
55 transactions, debit card transactions, prepaid access
56 transactions, automated clearinghouse transfers, or similar
57 funds transfers;

58 (B) Contracted service providers of an entity set forth in
59 §32A-2-3(a)(1) of this code that provide processing,
60 clearing, or settlement services in connection with wire
61 transfers, credit card transactions, debit card transactions,
62 prepaid access transactions, automated clearinghouse
63 transfers, or similar funds transfers; or

64 (C) Persons facilitating payment for goods or services
65 (not including currency transmission or money transmission
66 itself) pursuant to a contract with the payee and either
67 payment to the person or persons facilitating the payment
68 processing satisfies the payor's obligation to the payee or
69 that obligation is extinguished.

70 (b) Any person who holds and maintains a valid license
71 under this article may engage in the business of money
72 transmission or currency exchange at one or more locations
73 through or by means of an authorized delegate or delegates
74 as set forth in §32A-2-27 of this code, as the licensee may
75 designate and appoint from time to time. No such authorized
76 delegate is required to obtain a separate license under this
77 article, but the use of sub-delegates is prohibited and the
78 authorized delegate may only conduct business on behalf of
79 its licensee.

80 (c) The issuance and sale of stored value cards or similar
81 prepaid products which are intended to purchase items only
82 from the issuer or seller of the stored value card is exempt
83 from the provisions of this article.

84 (d) Any person who is required and properly obtains a
85 license under this article to transport currency is exempt
86 from the requirements of §30-18-1 *et seq.* of this code.



CHAPTER 40

**(Com. Sub. for H. B. 2538 - By Delegates Nelson,
Pushkin, Hornbuckle, McGeehan, Householder,
Barrett, Fluharty, Wilson, Byrd, Campbell and
Queen)**

[Passed March 5, 2019; in effect from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §12-1-14, relating to providing banking services for medical cannabis; providing findings; defining terms; authorizing Treasurer to competitively bid for financial institutions to provide banking services; providing for disposition of penalties collected pursuant to the West Virginia Medical Cannabis Act; authorizing the Treasurer to hold funds outside treasury until permitted to transfer money to state main disbursement account; authorizing Treasurer to charge fees for providing services; creating the Treasurer's Medical Cannabis Fund; requiring the Enterprise Resource Planning Board to configure wvOASIS to allow deposits in, investing moneys in, and making payments from the accounts established by the Treasurer at a selected financial institution; establishing that action under section not unlawful; providing that the Commissioner of Financial Institutions shall not prohibit,

penalize, incentivize or otherwise impair a financial institution from providing services under the Act in certain instances; providing that no cause of action exists against the Treasurer and state officers and employees involved in cannabis-related banking or financial services in their personal capacities in certain circumstances; and providing that the state will defend and indemnify the Treasurer and any state officers and employees involved in cannabis-related banking services provided within the scope of their duties or employment in accordance with the West Virginia Medical Cannabis Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-14. Banking Services for Medical Cannabis.

1 (a) The Legislature finds and declares that the inability
2 to provide banking services needed to collect and remit the
3 fees, penalties, and taxes authorized under the West
4 Virginia Medical Cannabis Act has delayed the
5 implementation and is precluding access by the patients
6 potentially eligible to be prescribed medical cannabis and
7 investment by the persons and entities interested in
8 providing services under the Act. The purpose of this
9 section is to provide a solution to the banking problems
10 encountered by the state in connection with the Act.

11 (b) The following words when used in this section shall
12 have the following meanings, unless the context clearly
13 indicates otherwise,

14 (1) “Act” means the West Virginia Medical Cannabis
15 Act in §16A-1-1 *et seq.* of this code;

16 (2) “Financial institution” means a bank, national
17 banking association, a non-bank financial institution, a bank
18 and trust company, a trust company, a savings and loan
19 association, a building and loan association, a mutual
20 savings bank, a credit union or a savings bank;

21 (3) “Non-bank financial institution” means a financial
22 institution that does not have a banking license or is not
23 supervised by a state, national or international banking
24 regulatory agency. If a non-bank financial institution is a
25 selected financial institution, it shall post a collateral bond
26 of not less than 125 percent of the amounts on deposit with
27 the Treasurer in lieu of any other collateral requirement in
28 this article.

29 (4) “Selected financial institution” means a financial
30 institution selected by the Treasurer under this section to
31 receive, invest, and disperse the fees, penalties, and taxes
32 authorized under the Act;

33 (5) “Treasurer” means the State Treasurer.

34 (c) The Treasurer shall select by competitive bid one or
35 more financial institutions to provide banking services for
36 the fees, penalties, and taxes collected under the Act and is
37 authorized to pay any fees charged by a selected financial
38 institution. A contract awarded by the Treasurer under the
39 section may be extended as long as the Treasurer determines
40 an extension is in the best interest of the state. A financial
41 institution selected shall meet the requirements of this
42 chapter for a state depository and any other applicable
43 requirements of this section.

44 (d) The Medical Cannabis Program Fund authorized in
45 §16A-9-2 of this code shall receive all civil penalties
46 collected under §16A-12-8 of this code. Any method of
47 receipt, remittance, payment, or transfer authorized by the
48 Treasurer are acceptable under the Act.

49 (e) The Treasurer’s office may authorize the Medical
50 Cannabis Program Fund be held in one or more accounts at
51 a selected financial institution outside the treasury until the
52 Treasurer is able to lawfully transfer moneys to the main
53 disbursement account of the state. Moneys in the Medical
54 Cannabis Program Fund may be invested by a financial
55 institution or the West Virginia Board of Treasury
56 Investments and earnings shall accrue to the Medical
57 Cannabis Program Fund.

58 (f) The Treasurer may charge fees for providing banking
59 services under the Act, including without limitation, fees for
60 expenses incurred, oversight, and compliance. The Treasurer's
61 Medical Cannabis Fund is hereby created to receive all fees
62 charged by the Treasurer. The Treasurer may authorize the
63 Treasurer's Medical Cannabis Fund held in an account at a
64 selected financial institution outside the treasury until the
65 Treasurer is lawfully able to transfer moneys to the main
66 disbursement account of the state. When the financial
67 institution holding the state concentration account will accept
68 the medical cannabis funds of the state, the Treasurer shall
69 transfer the funds and close the accounts created under this
70 section. Moneys in the Treasurer's Medical Cannabis Fund
71 shall be expended for the expenses incurred, oversight and
72 compliance, and may be invested by a financial institution or
73 the West Virginia Board of Treasury Investments with
74 earnings accruing to the fund.

75 (g) The Enterprise Resource Planning Board shall
76 configure wvOASIS to allow deposit in, investing moneys
77 in, and making payments from the accounts established by
78 the Treasurer pursuant to this section at a selected financial
79 institution.

80 (h)(1) Actions taken under and in accordance with this
81 section shall not be considered unlawful under any
82 provision of this code.

83 (2) The Commissioner of Financial Institutions shall not
84 prohibit, penalize, incentivize, or otherwise impair a
85 financial institution from providing services to a person or
86 entity involved in a medical cannabis-related business
87 functioning under the Medical Cannabis Act solely because
88 the person or entity is a grower, processor, dispensary,
89 owner of any proportion, operator, employee, patient,
90 caregiver, family or household member, financial broker, or
91 other similar person or entity of a medical cannabis-related
92 business operating in accordance with the Medical Cannabis
93 Act: *Provided*, That nothing in this section shall prohibit the
94 Commissioner of Financial Institutions from enforcing
95 applicable laws and regulations related to ensuring the
96 safety and soundness of a financial institution.

97 (3) No cause of action exists against the Treasurer and
98 the state officers and employees involved in cannabis-
99 related banking or financial services, in their personal
100 capacities, while acting within the scope of duties
101 contemplated by this Article or the Act. Any recovery for
102 claims or actions arising from this Article is limited solely
103 to the proceeds of available insurance coverage.

104 (4) To the extent permitted by law, the State of West
105 Virginia shall defend the Treasurer and the state officers and
106 employees involved in cannabis-related banking or
107 financial services against any claims, charges, liabilities or
108 expenses and shall indemnify and hold harmless the
109 Treasurer and any state employee involved in cannabis-
110 related banking or financial services provided within the
111 scope of their duties or employment in accordance with the
112 Act, including without limitation, defense in any state,
113 federal, or local court and payment of the amount of any
114 judgment obtained, damages, legal fees and expenses, and
115 any other expenses incurred.



CHAPTER 41

**(H. B. 2968 - By Delegates Nelson, Espinosa, Barrett,
Byrd, McGeehan, Criss and Porterfield)**

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

[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §31A-8-12b of the Code of West Virginia, 1931, as amended, relating to adding remote service units to the definition of customer bank communication terminal; defining remote service unit; and allowing national banks to operate remote service units in this state pursuant to federal regulation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-12b. Installation and operation of customer bank communication terminals permitted.

1 (a) Any banking institution as defined in §31A-1-2 of
2 this code, individually or jointly with one or more other
3 banking institutions or other federally insured financial
4 institutions having their principal offices in this state, or any
5 combination thereof, may upon 10 days prior written notice
6 filed with the commissioner, install, operate and engage in
7 banking business by means of one or more customer bank
8 communication terminals. Any banking institution which
9 installs and operates a customer bank communication
10 terminal:

11 (1) Shall make the customer bank communication
12 terminal available for use by other banking institutions; and

13 (2) May make the customer bank communication
14 terminal available for use by other federally insured
15 financial institutions, all in accordance with regulations
16 promulgated by the commissioner. The customer bank
17 communication terminals are not branch banks or branch
18 offices, agencies or places of business or off-premises walk-
19 in or drive-in banking facilities; nor do the operation of such
20 customer bank communication terminals to communicate
21 with and permit financial transactions to be carried out
22 through a nonexclusive access interchange system make any
23 banking institution which is part of such a nonexclusive
24 access interchange system have illegal branch banks or
25 branch offices, agencies or places of business or off-
26 premises walk-in or drive-in banking facilities.

27 (b) Notwithstanding the provisions of subdivision (1),
28 subsection (a) of this section, a customer bank
29 communication terminal located on the premises of the
30 principal office or branch bank of a banking institution or

31 on the premises of an authorized off-premises facility need
32 not be made available for use by any other banking
33 institution or its customers.

34 (c) For purposes of this section, “customer bank
35 communication terminal” means any electronic device or
36 machine owned, leased, or operated by a bank, together with
37 all associated equipment, structures and systems, including,
38 without limitation, remote service units, point of sale
39 terminals, through or by means of which a customer and a
40 banking institution may engage in any banking transactions,
41 whether transmitted to the banking institution
42 instantaneously or otherwise, including, without limitation,
43 the receipt of deposits of every kind, the receipt and
44 dispensing of cash, requests to withdraw money from an
45 account or pursuant to a previously authorized line of credit,
46 receiving payments payable at the bank or otherwise
47 transmitting instructions to receive, transfer or pay funds for
48 a customer’s benefit. Personal computers, telephones and
49 associated equipment which enable a bank customer to
50 conduct banking transactions at their home or office through
51 links to their bank’s computer or telephone network, do not
52 constitute a “customer bank communication terminal”
53 under this section. All transactions initiated through a
54 customer bank communication terminal are subject to
55 verification by the banking institution.

56 (d) No person, other than: (1) A banking institution
57 authorized to engage in the banking business in this state; or
58 (2) a credit union authorized to conduct business in this
59 state, may operate any automatic teller machine (“ATM”)
60 or automatic loan machine (“ALM”) or remote service unit
61 (“RSU”) located in this state: *Provided*, That ATM or RSU
62 terminals of out-of-state banks not having branches in this
63 state are allowed to operate to the same extent as a West
64 Virginia bank if a national bank from that state not having
65 branches in West Virginia could do so through a federal
66 preemption of state law.

67 (e) For the purposes of this section, “remote service
68 unit” means automated facility, operated by a customer of a
69 bank, that conducts banking functions such as receiving
70 deposits, paying withdrawals, or lending money, and
71 includes an unmanned or automated teller machine, an
72 automated loan machine, and an automated device for
73 receiving deposits. A remote service unit may be equipped
74 with a telephone or video device that allows contact with
75 bank personnel.

76 (f) For the purposes of this section, “point of sale
77 terminal” means a customer bank communication terminal
78 used for the primary purpose of either transferring funds to
79 or from one or more deposit accounts in a banking
80 institution or segregating funds in one or more deposit
81 accounts in a banking institution for future transfer, or both,
82 in order to execute transactions between a person and his or
83 her customers incident to sales, including, without
84 limitation, devices and machines which may be used to
85 implement and facilitate check guaranty and check
86 authorization programs.

87 (g) Nothing in this section prevents point of sale
88 terminals and associated equipment from being owned,
89 leased or operated by nonbanking entities: *Provided*, That
90 those persons may not engage in the business of banking by
91 using point of sale devices. The use of a point of sale
92 terminal to enable a customer or other person to withdraw
93 and obtain cash of more than \$50 in excess of the sales
94 transaction purchase amount, is presumed to constitute
95 engaging in the business of banking: *Provided, however*,
96 That cash withdrawals through a point of sale terminal in
97 excess of \$50 is not engaging in the business of banking if
98 the sales transaction is made with the use of a West Virginia
99 check card, as provided in §12-3A-1 *et seq.* of this code, or
100 with an electronic benefits transfer or other card issued by
101 state spending units to transmit payments of food benefits,
102 temporary assistance to needy families, or other assistance,

103 benefit or entitlement programs mandated or offered by
104 federal or state government: *Provided further*, That any
105 retailer, agency or person providing cash withdrawals with
106 a West Virginia check card or an electronic benefits transfer
107 card through a POS terminal is limited to charging a fee for
108 the services in the amount of the higher of \$1 or one percent
109 of the amount of cash withdrawn.

110 (h) Except for customer bank communication terminals
111 located on the premises of the principal office or a branch
112 bank of the banking institution or on the premises of an
113 authorized off-premises walk-in or drive-in banking facility,
114 a customer bank communication terminal shall be
115 unattended or attended by persons not employed by any
116 banking institution utilizing the terminal: *Provided*, That:

117 (1) Employees of the banking institution may be present
118 at the terminal not located on the premises of an authorized
119 off-premises facility solely for the purposes of installing,
120 maintaining, repairing and servicing same; and

121 (2) A banking institution may provide an employee to
122 instruct and assist customers in the operation thereof:
123 *Provided*, That the employee may not engage in any other
124 banking activity.

125 (i) The commissioner shall prescribe by rule the
126 procedures and standards regarding the installation and
127 operation of customer bank communication terminals,
128 including, without limitation, the procedure for the sharing
129 thereof.



CHAPTER 42

(Com. Sub. for S. B. 3 - By Senators Boso, Clements, Swope, Takubo, Cline and Trump)

[Passed March 5, 2019; in effect from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-6L-1, §11-6L-2, §11-6L-3, §11-6L-4, and §11-6L-5; to amend said code by adding thereto three new sections, designated §31G-4-4, §31G-4-5, and §31G-4-6; and to amend said code by adding thereto a new chapter, designated §31H-1-1, §31H-1-2, §31H-2-1, §31H-2-2, §31H-2-3, and §31H-2-4, all relating generally to wireless telecommunication technology facilities; providing a special method for valuation of certain wireless technology property for property taxes; defining terms; providing mandated salvage valuation of certain wireless businesses' property; specifying method for valuation of certain property; requiring initial determination and specifying procedure for protest and appeal of determination; establishing and delineating Public Service Commission jurisdiction over make-ready pole access within the state; determining the feasibility of electric utilities constructing and operating middle-mile broadband Internet projects to serve certain unserved and underserved areas; defining certain terms; delineating the factors that must be contained in certain feasibility studies; requiring the Broadband Enhancement Council and the Public Service Commission to assist electric utilities in the determination of the feasibility of certain proposed middle-mile broadband development projects; requiring that the Broadband Enhancement Council render a judgment as to the feasibility of middle-mile broadband Internet projects within a certain period of time; requiring

certain reports be submitted to certain officials and committees; providing for severability; establishing the West Virginia Small Wireless Facilities Deployment Act; making legislative findings; defining terms; providing for access to public rights-of-way for the collocation of small wireless facilities; providing for certain permit requirements; authorizing and limiting access to collocation sites, structures, and equipment; requiring permits to be issued on a nondiscriminatory basis; providing for the collection of fees and setting the amount of fees; and providing for certain zoning, indemnification, insurance, and bonding requirements.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 6L. SPECIAL METHOD FOR VALUATION OF CERTAIN WIRELESS TECHNOLOGY PROPERTY.

§11-6L-1. Short title.

1 This article shall be known and cited as the Wireless
2 Technology Business Property Valuation Act.

§11-6L-2. Definitions.

1 For the purposes of this article:

2 (1) “Tower” means a structure which hosts an antenna
3 or other equipment used for the purposes of transmitting
4 cellular or wireless signals for communications purposes,
5 including telephonically, or for computing purposes,
6 including any antenna and all associated equipment, and
7 which is constructed or erected between July 1, 2019, and
8 July 1, 2024; and

9 (2) “Salvage value” means five percent of original cost.

§11-6L-3. Limited-time valuation of certain specialized wireless technology property.

1 Notwithstanding any other provision of this code to the
 2 contrary, for five years immediately following the date of
 3 its erection, the value of a tower is its salvage value, and the
 4 correlated value determined under a unit valuation approach
 5 shall be reduced by the difference between the original cost
 6 and the salvage value of a tower.

§11-6L-4. Initial determination; protest and appeal.

1 The valuation and assessment of any tower subject to
 2 this article, including the process of protest and appeal from
 3 any such valuation, shall be conducted the manner set forth
 4 and more fully described in §11-6-1 *et seq.* of this code and
 5 any applicable legislative rules.

§11-6L-5. Effective date.

1 This article is effective on and after July 1, 2019.

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

ARTICLE 4. MAKE-READY POLE ACCESS.

§31G-4-4. Public Service Commission jurisdiction; rulemaking; enforcement.

1 (a) The Public Service Commission shall possess and
 2 exercise regulatory jurisdiction over the provisions of this
 3 article. The commission shall administer and adjudicate
 4 disputes relating to the issues and procedures provided for
 5 under this article.

6 (b) The commission shall adopt the rates, terms, and
 7 conditions of access to and use of poles, ducts, conduits, and
 8 rights-of-way as provided in 47 U.S.C. § 224 and 47 C.F.R.
 9 § 1.1401 – 1.1415, inclusive, of the dispute resolution
 10 process incorporated by reference in those regulations and
 11 any subsequent modifications or additions to the provisions
 12 of the United States Code or Code of Federal Regulations
 13 provisions referenced herein.

14 (c) The commission shall certify to the Federal
15 Communications Commission that this state, as evidenced
16 by the enactment of this article, hereby exercises
17 jurisdiction over the regulation of pole attachments. The
18 certification shall include notice that the State of West
19 Virginia hereby:

20 (1) Regulates the rates, terms, and conditions related to
21 pole attachments; and

22 (2) In so regulating such rates, terms, and conditions, the
23 state has the authority to consider and does consider the
24 interests of the subscribers of the services offered via such
25 attachments, as well as the interests of the consumers of the
26 services.

**§31G-4-5. Electric power utilities; feasibility study for providing
broadband services; Public Service Commission to assist;
proposed legislation to be developed; report.**

1 (a) For purposes of this section:

2 (1) “Commission” shall mean the West Virginia Public
3 Service Commission.

4 (2) “Council” shall mean the Broadband Enhancement
5 Council, as defined in §31G-1-1 of this code.

6 (3) “Electric utility” shall mean any electric utility
7 operating within this state that is regulated by the
8 commission.

9 (4) “Project” shall mean a middle-mile broadband
10 infrastructure expansion project proposed by an electric
11 utility.

12 (b) Each electric utility may investigate the feasibility
13 of constructing and operating a project within the electric
14 utility distribution system and, if it so elects, may submit a
15 feasibility study of a proposed project to the council on or
16 before December 1, 2019. Additional feasibility studies may

17 be submitted to the council after December 1, 2019, without
18 penalty.

19 (c) The council and the commission shall assist each
20 such electric utility in its preparation of such a feasibility
21 study.

22 (d) The feasibility study shall include an evaluation of
23 the following:

24 (1) The scope of the proposed project for which the
25 feasibility study is conducted, which shall include, but not
26 be limited to:

27 (A) The route of the middle-mile infrastructure
28 proposed for the project, the number of fiber strands that
29 would be utilized in connection with the proposed project
30 and dedicated to serve as the middle mile, the location of the
31 electric utility's distribution infrastructure that will be
32 utilized in connection with the proposed project, the
33 capacity of the middle-mile broadband infrastructure that
34 will be available to lease to last-mile broadband Internet
35 providers upon completion of the proposed project;

36 (B) The estimated cost of the proposed project,
37 including but not limited to engineering costs, construction
38 costs, permitting costs, materials and labor, right-of-way
39 costs, and a reasonable rate of return to the electric utility;

40 (C) The proposed schedule of construction of the
41 proposed project; and

42 (D) The method of attachment and connection of the
43 middle-mile broadband fiber assets to the electric utility's
44 distribution infrastructure;

45 (2) The regulatory and legal barriers to an electric utility
46 constructing a project and operating middle-mile broadband
47 infrastructure to provide access to unserved areas of the
48 state, as defined in §31G-1-2 of this code, and any

49 underserved areas of the state, and proposed legislation to
50 address such regulatory barriers;

51 (3) Whether it is in the public interest and the interest of
52 the electric utility to make improvements to the distribution
53 grid in furtherance of providing such middle-mile
54 broadband Internet services in conjunction with its program
55 of electric distribution projects;

56 (4) Whether it is in the public interest and the interest of
57 the electric utility to operate middle-mile broadband
58 Internet assets to provide access to unserved and
59 underserved areas of the state;

60 (5) Whether it is in the public interest and the interest of
61 the electric utility to permit a third party to lease such
62 capacity to provide last-mile broadband Internet services to
63 unserved and underserved areas of the state;

64 (6) Whether construction of middle-mile broadband
65 Internet infrastructure utilizing electric utility distribution
66 systems is feasible with respect to the maturity of the
67 relevant technology, the compatibility of such services with
68 existing electric services, and the financial requirements to
69 undertake such project;

70 (7) The anticipated level of rate adjustment necessary to
71 allow the electric utility to recover its costs associated with
72 the proposed project, and a reasonable rate of return, on an
73 expedited basis, that will be recovered by the electric utility
74 through a rate adjustment at the commission; and

75 (8) Such other information that is pertinent to the
76 project.

77 (e) Upon receipt of a feasibility study, the council shall
78 post the same on the council website for written public
79 comment for a period of seven days and then shall render a
80 determination, by a majority vote of the council, as to the
81 feasibility of the proposed project.

82 (f) In its consideration of the feasibility of a project, the
83 council shall identify one or more last-mile broadband
84 Internet providers that may lease the middle-mile broadband
85 Internet capacity created by the proposed project pursuant
86 to lease terms and conditions set by the council.

87 (g) The council shall render such feasibility
88 determination within 60 days from the date the feasibility
89 study is submitted to the council.

90 (h) Commencing January 1, 2020, and each year
91 thereafter, the council shall give a report of its consideration
92 of feasibility studies submitted pursuant to this section to
93 the Governor, the President of the Senate, the Speaker of the
94 House of Delegates, and the Joint Committee on
95 Government and Finance.

§31G-4-6. Severability.

1 Pursuant to §2-2-10 of this code, if any provision of this
2 article or the application thereof to any person or
3 circumstance is held unconstitutional or invalid, such
4 unconstitutionality or invalidity shall not affect other
5 provisions or applications of the article, and to this end the
6 provisions of this article are declared to be severable.

CHAPTER 31H. SMALL WIRELESS FACILITIES DEPLOYMENT ACT.

ARTICLE 1. WEST VIRGINIA SMALL WIRELESS FACILITIES DEPLOYMENT ACT.

§31H-1-1. Legislative findings.

1 (a) The deployment of reliable small wireless facilities
2 and other next generation wireless and broadband network
3 technology is a matter of statewide concern and critical to
4 the continued economic development and diversification in
5 the State of West Virginia.

6 (b) Small wireless facilities are critical to delivering
7 wireless access to advanced technology, broadband, and

8 911 services to homes, businesses, and schools throughout
9 the State of West Virginia.

10 (c) Because of the integral role that the delivery of
11 broadband and wireless technology plays in the economic
12 vitality of the State of West Virginia and in the lives of its
13 citizens, the Legislature has determined that a law
14 addressing the further deployment of wireless technology is
15 of vital interest to the state.

16 (d) Small wireless facilities, including facilities
17 commonly referred to as small cells and distributed antenna
18 systems, may often be deployed most effectively in public
19 rights-of-way.

20 (e) To meet the key objectives of this chapter, wireless
21 providers must have access to certain public rights-of-way
22 and the ability to attach or collocate on existing
23 infrastructure that will permit these providers to offer next
24 generation wireless and broadband technology.

25 (f) To ensure that public and private West Virginia
26 consumers may benefit from these services as soon as
27 possible and to ensure that providers of wireless access have
28 a fair and predictable process for the deployment of small
29 wireless facilities in a manner consistent with the character
30 of the area in which the small wireless facilities are
31 deployed, the Legislature is enacting this chapter, which
32 specifies the regulatory authority for the collocation of
33 small wireless facilities.

§31H-1-2. Definitions.

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

4 (1) “Antenna” means communications equipment that
5 transmits or receives electromagnetic radio frequency
6 signals used in the provision of wireless services;

7 (2) “Applicable codes” means uniform building, fire,
8 electrical, plumbing, or mechanical codes adopted by a
9 recognized national code organization or local amendments
10 to those codes, including the National Electric Safety Code;

11 (3) “Applicant” means any person who submits an
12 application and is a wireless provider;

13 (4) “Application” means a request submitted by an
14 applicant to an authority for a permit to collocate small
15 wireless facilities or to approve the installation,
16 modification, or replacement of a utility pole or wireless
17 support structure;

18 (5) “Authority” means the State of West Virginia or a
19 political subdivision that has jurisdiction and control for use
20 of public rights-of-way as provided by this code for
21 placements within public rights-of-way or has zoning or
22 land use control for placements not within public rights-of-
23 way;

24 (6) “Authority utility pole” means a utility pole owned
25 or operated by an authority in a public right-of-way;

26 (7) “Collocate” or “collocation” means to install, mount,
27 maintain, modify, operate, or replace wireless facilities on
28 or adjacent to a wireless support structure or utility pole;

29 (8) “Commissioner” means the Commissioner of the
30 West Virginia Division of Highways;

31 (9) “Communications facilities” means the set of
32 equipment and network components, including wires,
33 cables, antennas, and associated facilities, used by a
34 communications service provider to provide
35 communications service;

36 (10) “Communications service” means cable service, as
37 defined in 47 U.S.C. 522(6), as amended; information
38 service, as defined in 47 U.S.C. 153(24), as amended;
39 telecommunications service, as defined in 47 U.S.C.

40 153(53), as amended; mobile service, as defined in 47
41 U.S.C. 153(33), as amended; or wireless service other than
42 mobile service;

43 (11) “Communications service provider” means any
44 entity that provides communications service;

45 (12) “Decorative pole” means an authority utility pole
46 that is specially designed and placed for aesthetic purposes
47 and on which no appurtenances or attachments, other than a
48 small wireless facility, or specially designed informational,
49 or directional signage, or temporary holiday or special event
50 attachments have been placed, or are permitted to be placed,
51 according to nondiscriminatory municipal rules or codes;

52 (13) “Division” means the West Virginia Division of
53 Highways;

54 (14) “FCC” means the Federal Communications
55 Commission of the United States;

56 (15) “Fee” means a one-time, nonrecurring charge;

57 (16) “Historic district” means a group of buildings,
58 properties, or sites that are either listed in the National
59 Register of Historic Places or formally determined eligible
60 for listing by the Keeper of the National Register, the
61 individual who has been delegated the authority by the
62 federal agency to list properties and determine their
63 eligibility for the National Register, in accordance with
64 Section VI.D.1.a.i-v of the Nationwide Programmatic
65 Agreement codified at 47 C.F.R. Part 1, Appendix C;

66 (17) “Law” means a federal or state statute, common
67 law, code, rule, regulation, order, or a local ordinance or
68 resolution;

69 (18) “Micro wireless facility” means a small wireless
70 facility that is not larger in dimension than 24 inches in
71 length, 15 inches in width, and 12 inches in height and that

72 has an exterior antenna, if any, that is no longer than 11
73 inches;

74 (19) “Permit” means a written authorization required by
75 an authority to perform an action or initiate, continue, or
76 complete a project;

77 (20) “Person” means an individual, corporation, limited
78 liability company, partnership, association, trust, or other
79 entity or organization, including an authority;

80 (21) “Rate” means a recurring charge;

81 (22) “Right-of-way” means the area on, below, or above
82 a public roadway, highway, street, sidewalk, alley, utility
83 easement, or similar property, but not including a federal
84 interstate highway;

85 (23) “Small wireless facility” means a wireless facility
86 that meets both of the following qualifications:

87 (A) Each antenna could fit within an imaginary
88 enclosure of no more than 6 cubic feet; and

89 (B) All other wireless equipment associated with the
90 facility is cumulatively no more than 28 cubic feet in
91 volume. The following types of associated ancillary
92 equipment are not included in the calculation of equipment
93 volume: Electric meter, concealment elements,
94 telecommunications demarcation box, ground-based
95 enclosures, grounding equipment, power transfer switch,
96 cut-off switch, and vertical cable runs for the connection of
97 power and communications services;

98 (24) “Utility pole” means a pole or similar structure that
99 is or may be used, in whole or in part, by a communication
100 services provider or for electric distribution, lighting, traffic
101 control, signage (if the pole is 15 feet or taller), or a similar
102 function, or for the collocation of small wireless facilities.
103 However, “utility pole” does not include wireless support
104 structures or electric transmission structures;

105 (25) “Wireless facility” means equipment at a fixed
106 location that enables wireless communications between user
107 equipment and a communications network, including:

108 (A) Equipment associated with wireless
109 communications; and

110 (B) Radio transceivers, antennas, coaxial or fiber-optic
111 cable, regular and backup power supplies, and comparable
112 equipment, regardless of technological configuration.
113 “Wireless facility” includes small wireless facilities.
114 “Wireless facility” does not include:

115 (i) The structure or improvements on, under, or within
116 which the equipment is collocated; or

117 (ii) Wireline backhaul facilities, coaxial or fiber-optic
118 cable that is between wireless support structures or utility
119 poles, or coaxial or fiber-optic cable that is otherwise not
120 immediately adjacent to, or directly associated with, an
121 antenna;

122 (26) “Wireless infrastructure provider” means any
123 person, including a person authorized to provide
124 telecommunications service in the state, that builds or
125 installs wireless communication transmission equipment,
126 wireless facilities, wireless support structures, or utility
127 poles, but that is not a wireless provider;

128 (27) “Wireless provider” means a wireless
129 infrastructure provider or a wireless provider;

130 (28) “Wireless services” means any services, using
131 licensed or unlicensed spectrum, including the use of WiFi,
132 whether at a fixed location or mobile location, provided to
133 the public using wireless facilities;

134 (29) “Wireless service provider” means a person who
135 provides wireless services;

136 (30) “Wireless support structure” means a structure,
137 such as a monopole; tower, either guyed or self-supporting;
138 billboard; or other existing or proposed structure designed
139 to support or capable of supporting wireless facilities.
140 “Wireless support structure” does not include a utility pole;
141 and

142 (31) “Wireline backhaul facility” is a facility used for
143 the transport of communications service or any other
144 electronic communications by coaxial, fiber-optic cable, or
145 any other wire.

ARTICLE 2. ACCESS TO PUBLIC RIGHTS-OF-WAY.

§31H-2-1. Use of rights-of-way for small wireless facilities and utility poles; other structures.

1 (a) The provisions of this section shall only apply to
2 activities of a wireless provider within the right-of-way.

3 (b) Except as provided in this chapter, an authority may
4 not prohibit, regulate, or charge for the collocation of small
5 wireless facilities or the installation of utility poles and
6 associated small wireless facilities.

7 (c) An authority may not enter into an exclusive
8 arrangement with any person for use of the right-of-way for
9 the collocation of small wireless facilities or the installation,
10 operation, marketing, modification, maintenance, or
11 replacement of utility poles.

12 (d) An authority may only charge a wireless provider a
13 rate or fee for the use of the right- of-way with respect to the
14 collocation of small wireless facilities or the installation,
15 maintenance, modification, operation, or replacement of a
16 utility pole in the right-of-way if the authority charges other
17 entities for similar use of the right-of-way. Notwithstanding
18 any provision of this article to the contrary, an authority is
19 permitted, on a nondiscriminatory basis, to refrain from
20 charging any rate to a wireless provider for the use of the
21 right-of-way. The rate for occupancy and use of the right-

22 of-way may not initially exceed \$25 per year per small
23 wireless facility. An authority may adjust this rate up to 10
24 percent every five years.

25 (e) Subject to the provisions of this section, a wireless
26 provider has the right, as a permitted use not subject to
27 zoning review or approval, to collocate small wireless
28 facilities and install, maintain, modify, and replace its own
29 utility poles or, with the permission of the owner, a third
30 party's utility pole, along, across, upon, and under the right-
31 of-way. Such structures and facilities shall be so installed
32 and maintained as not to obstruct or hinder the usual travel
33 or public safety on such right-of-way or to obstruct the legal
34 use of such right-of-way by utilities or authorities.

35 (f) Each new or modified utility pole installed by a
36 wireless provider in the right-of-way may not exceed the
37 greater of:

38 (1) Ten feet in height above the tallest existing utility
39 pole in place as of the effective date of this chapter located
40 within 500 feet of the new pole in the same right-of-way; or

41 (2) Fifty feet above ground level. New small wireless
42 facilities in the right-of-way may not extend:

43 (A) More than 10 feet above an existing utility pole in
44 place as of the effective date of this chapter; or

45 (B) For small wireless facilities on a new utility pole,
46 above the height permitted for a new utility pole pursuant to
47 the provisions of this section. Subject to the provisions of
48 this article, a wireless provider has the right to collocate a
49 small wireless facility and install, maintain, modify,
50 operate, and replace its own utility pole or, with the
51 permission of the owner, a third party's utility pole that
52 exceeds these height limits along, across, upon, and under
53 the right-of-way, subject to applicable zoning regulations.

54 (g) An authority may adopt reasonable written design
55 guidelines with objective, technically feasible criteria that

56 reasonably match the aesthetics and character of an
57 immediate area regarding all of the following:

58 (1) The location of any ground-mounted small wireless
59 facilities;

60 (2) The location of a small wireless facility on a utility
61 pole or wireless support structure;

62 (3) The appearance and concealment of small wireless
63 facilities, including those relating to materials used for
64 arranging, screening, or landscaping; and

65 (4) The design and appearance of a utility pole or
66 wireless support structure.

67 Any such guidelines shall be applied in a
68 nondiscriminatory manner. Materials utilized to comply
69 with the appearance and concealment criteria established in
70 the guidelines shall not be considered part of the small
71 wireless facility for purposes of facility size restrictions in
72 this chapter. Each new or modified small wireless facility or
73 utility pole installed in the right-of-way shall comply with
74 an authority's current design guidelines.

75 (h) A wireless provider is permitted to replace
76 decorative poles when necessary to collocate a small
77 wireless facility, but any replacement pole shall reasonably
78 conform to the design aesthetics of the decorative poles
79 being replaced.

80 (i) A wireless provider shall comply with written,
81 objective, reasonable, and nondiscriminatory requirements
82 that prohibit the installation of structures in the right-of-way
83 in an area designated solely for underground
84 communications and electric lines where:

85 (1) The authority has required all such lines to be placed
86 underground by a date certain that is three months prior to
87 the submission of the application;

88 (2) Those utility poles which the authority allows to
89 remain shall be made available to wireless providers for the
90 collocation of small wireless facilities and may be replaced
91 by a wireless provider to accommodate the collocation of
92 small wireless facilities, in compliance with this act; and

93 (3) A wireless provider may install a new utility pole in
94 the designated area that otherwise complies with the other
95 subsections of this section when it is not able to provide
96 wireless service by collocating on a remaining structure. For
97 small wireless facilities installed before an authority adopts
98 requirements that communications and electric lines be
99 placed underground, an authority adopting such
100 requirements shall:

101 (A) Permit a wireless provider to maintain the small
102 wireless facilities in place subject to any applicable pole
103 attachment agreement with the utility pole owner; or

104 (B) Permit the wireless provider to replace the
105 associated utility pole within 50 feet of the prior location,
106 subject to the permission of the utility pole owner.

107 (j) Subject to the provisions of this section, an authority
108 may require reasonable, technically feasible,
109 nondiscriminatory, and technologically neutral design or
110 concealment measures in a historic district. Any such design
111 or concealment measures may not have the effect of
112 prohibiting any provider's technology; nor may any such
113 measures be considered a part of the small wireless facility
114 for purposes of the size restrictions in the definition of small
115 wireless facility.

116 (k) Any requirements an authority adopts under
117 subsections (g) through (j), inclusive, of this section must
118 be:

119 (1) Reasonable, in that they are technically feasible and
120 reasonably directed to avoiding or remedying the intangible
121 public harm of unsightly or out-of-character deployments;

122 (2) No more burdensome than those applied to other
123 types of infrastructure deployments; and

124 (3) Objective and published in advance. The authority,
125 in the exercise of its administration and regulation related to
126 the management of the right-of-way, must be competitively
127 neutral with regard to other wireless service providers who
128 are users of the right-of-way, including that terms may not
129 be unreasonable or discriminatory and may not violate any
130 applicable law or effectively prohibit the provision of
131 wireless services.

132 (l) The authority may require a wireless provider to
133 repair all damage to the right-of-way directly caused by
134 the activities of the wireless provider in the right-of-way
135 and to return the right-of-way to its functional
136 equivalence before the damage, as determined by the
137 authority, pursuant to the competitively neutral,
138 reasonable requirements and specifications of the
139 authority. If the wireless provider fails to make the repairs
140 required by the authority within a reasonable time after
141 written notice, the authority may complete those repairs
142 and charge the applicable party the reasonable,
143 documented cost of such repairs. Regardless of whether
144 the authority or the wireless provider ultimately makes
145 the repairs, the authority may assess an additional fine of
146 \$100 per day that the wireless provider failed to make the
147 required repairs after the wireless provider received
148 written notice until the repairs were completed.

149 (m) Nothing in this chapter shall be deemed to impose
150 or otherwise affect any rights, controls, tariffs, or
151 contractual obligations that may be established with
152 regard to the utility poles, similar structures, or
153 equipment of any type that are owned or controlled by an
154 investor-owned electric utility whose rates are regulated
155 by the Public Service Commission of West Virginia or
156 any such utility's affiliates, or by an independent
157 transmission company.

§31H-2-2. Permitting process for small wireless facilities.

1 (a) The provisions of this section shall apply to the
2 permitting of small wireless facilities by a wireless provider
3 in or outside the right-of-way as specified in subsection (b)
4 of this section and to the permitting of the installation,
5 modification, and replacement of utility poles by a wireless
6 provider inside the right-of-way.

7 (b) Small wireless facilities that meet the requirements
8 of §31H-2-1(f) through §31H-2-1(j) of this code shall be
9 classified as permitted uses and not subject to zoning review
10 or approval if they are collocated:

11 (1) In the right-of-way in any zone; or

12 (2) Outside the right-of-way in property not zoned
13 exclusively for single-family residential use.

14 (c) An authority may require an applicant to obtain one
15 or more permits to collocate a small wireless facility that
16 meets the requirements of §31H-2-1(f) through §31H-2-1(j)
17 of this code or to install, modify, or replace a utility pole and
18 associated small wireless facilities that meet the
19 requirements of §31H-2-1(f) through §31H-2-1(j) of this
20 code, provided that the permits are of general applicability.
21 An authority shall receive applications for, process, and
22 issue permits subject to the following requirements:

23 (1) An authority may not directly or indirectly require
24 an applicant to perform services unrelated to the collocation
25 for which approval is sought, such as in-kind contributions
26 to the authority, including reserving fiber, conduit, or pole
27 space for the authority on the wireless provider's utility
28 pole;

29 (2) An applicant may not be required to provide more
30 information to obtain a permit than communications service
31 providers that are not wireless providers, provided that an
32 applicant may be required to include construction and

33 engineering drawings and information demonstrating
34 compliance with the criteria set forth in this subsection;

35 (3) An authority, other than the Division of Highways,
36 may not require the placement of small wireless facilities on
37 any specific utility pole or category of poles or require
38 multiple antenna systems on a single utility pole nor the
39 underground placement of small wireless facilities;

40 (4) An authority, other than the Division of Highways,
41 may not limit the placement of small wireless facilities by
42 minimum separation distances;

43 (5) An authority may require an applicant to include an
44 attestation that the small wireless facilities will be
45 operational for use by a wireless provider within one year
46 after the permit issuance date, unless the authority and the
47 applicant agree to extend this period or delay is caused by
48 lack of commercial power or communications transport
49 facilities to the site;

50 (6) Within 10 days of receiving an application, an
51 authority must determine and notify the applicant in writing
52 whether the application is complete. If an application is
53 incomplete, an authority must specifically identify the
54 missing information in writing. The processing deadlines in
55 this subsection are tolled from the time the authority sends
56 the notice of incompleteness to the time the applicant
57 provides the missing information. That processing deadline
58 also may be tolled by agreement of the applicant and the
59 authority;

60 (7) An application shall be processed on a
61 nondiscriminatory basis and deemed approved if the
62 authority fails to approve or deny the application within 60
63 days of receipt of the application for a collocation of a small
64 wireless facility and 90 days for an application for the
65 installation, modification, or replacement of a utility pole in
66 the right-of-way;

67 (8) An authority may deny a proposed collocation of a
68 small wireless facility or installation, modification, or
69 replacement of a utility pole that meets the requirements of
70 this section only if the proposed application:

71 (A) Materially interferes with the safe operation of
72 traffic control equipment;

73 (B) Materially interferes with sight lines or clear zones
74 for transportation or pedestrians;

75 (C) Materially interferes with compliance with the
76 Americans with Disabilities Act or similar federal or state
77 standards regarding pedestrian access or movement;

78 (D) Fails to comply with reasonable and
79 nondiscriminatory spacing requirements of general
80 application adopted by legislative rule or ordinance that
81 concern the location of ground-mounted equipment and new
82 utility poles. Such spacing requirements may not prevent a
83 wireless provider from serving any location;

84 (E) Fails to comply with applicable codes, legislative
85 rule, and generally applicable standards that are consistent
86 with this chapter and adopted by an authority for
87 construction and public safety in the rights-of-way,
88 including reasonable and nondiscriminatory wiring and
89 cabling requirements, grounding requirements, and
90 abandonment and removal provisions;

91 (F) Fails to comply with applicable design guidelines
92 adopted under §31H-2-1(g) of this code; or

93 (G) Fails to attest that a small wireless facility will
94 comply with relevant Federal Communications
95 Commission (FCC) regulations concerning:

96 (1) Radiofrequency emissions from radio transmitters;
97 and

98 (2) Unacceptable interference with the public safety
99 spectrum and CII spectrum, including compliance with the
100 abatement and resolution procedures for interference with
101 the public safety spectrum and CII spectrum established by
102 the FCC set forth in 47 C.F.R. 22.970 through 47 C.F.R.
103 22.973 and 47 C.F.R. 90.672 through 47 C.F.R. 90.675;

104 (9) The authority must document the basis for a denial,
105 including the specific code provisions on which the denial
106 was based, and send the documentation to the applicant on
107 or before the day the authority denies an application. The
108 applicant may cure the deficiencies identified by the
109 authority and resubmit the application within 30 days of the
110 denial without paying an additional application fee. The
111 authority shall approve or deny the revised application
112 within 30 days. Any subsequent review shall be limited to
113 the changes made in the resubmission;

114 (10) An applicant seeking to collocate small wireless
115 facilities within the jurisdiction of a single authority shall be
116 allowed at the applicant's discretion to file a consolidated
117 application and receive a single permit for the collocation of
118 multiple small wireless facilities; the denial of one or more
119 small wireless facilities in a consolidated application may
120 not delay processing of any other small wireless facilities in
121 the same batch;

122 (11) Installation or collocation for which a permit is
123 granted pursuant to this section shall be completed within
124 one year after the permit issuance date unless the authority
125 and the applicant agree to extend this period or a delay is
126 caused by the lack of commercial power or communications
127 facilities at the site. Approval of an application authorizes
128 the applicant to:

129 (A) Undertake the installation or collocation; and

130 (B) Subject to applicable relocation requirements and
131 the applicant's right to terminate at any time, operate and
132 maintain the small wireless facilities and any associated

133 utility pole installed by the wireless provider or authority
134 utility that is covered by the permit for a period of not less
135 than 10 years, which must be renewed for equivalent
136 durations so long as the small wireless facilities and utility
137 pole are in compliance with the criteria set forth in this
138 subsection;

139 (12) An authority may not institute, either expressly or
140 de facto, a moratorium on filing, receiving, or processing
141 applications or issuing permits or other approvals, if any, for
142 the collocation of small wireless facilities or the installation,
143 modification, or replacement of utility poles to support
144 small wireless facilities.

145 (d) An authority may require a permit to work within a
146 right-of-way for any activities under this chapter, if
147 applicable, and may prohibit access when a road is closed
148 or its access is limited to the public: *Provided*, That except
149 for this permit, and the other actions explicitly authorized
150 by this chapter, an authority may not require an additional
151 application, approval, or permit, or require any fees or other
152 charges from a communications service provider authorized
153 to occupy the right-of-way, for:

154 (1) Routine maintenance;

155 (2) The replacement of wireless facilities with wireless
156 facilities that are substantially similar, the same size, or
157 smaller; or

158 (3) The installation, placement, maintenance, operation,
159 or replacement of micro wireless facilities that are
160 suspended on existing cables that are strung between
161 existing utility poles in compliance with applicable safety
162 codes and the pole owner's construction standards and
163 engineering practices.

164 (e) An authority may revoke a permit at any time if the
165 conditions of the permit required pursuant to this article are
166 no longer being satisfied.

§31H-2-3. Access to authority utility poles; application and permit fees and rates for small wireless facilities.

1 (a) An authority shall allow the collocation of small
2 wireless facilities on authority utility poles within the right-
3 of-way subject to the provisions of this chapter and the
4 following:

5 (1) An authority may not enter into an exclusive
6 arrangement with any person for the right to attach small
7 wireless facilities to authority utility poles;

8 (2) The rates and fees for collocations on authority
9 utility poles shall be nondiscriminatory regardless of the
10 services provided by the collocating person;

11 (3) An authority may charge an annual recurring rate to
12 collocate small wireless facilities on an authority utility pole
13 that equals \$65 per year per pole. An authority may adjust
14 this rate 10 percent every five years, rounded to the nearest
15 five dollars. Nothing in this subdivision prohibits a wireless
16 provider and an authority from mutually agreeing to an
17 annual recurring rate of less than \$65 to collocate a small
18 wireless facility on an authority utility pole;

19 (4) The rates, fees, and terms for make-ready work must
20 be nondiscriminatory, competitively neutral, and
21 commercially reasonable and must comply with this
22 section;

23 (5) An authority shall provide a good faith estimate for
24 any make-ready work necessary to enable the pole to
25 support the requested collocation by a wireless provider,
26 including pole replacement if necessary, within 60 days
27 after receipt of a complete application. Make-ready work
28 including any pole replacement shall be completed within
29 60 days of written acceptance of the good faith estimate by
30 the applicant. An authority may require replacement of the
31 authority utility pole only if it demonstrates that the
32 collocation would make the authority utility pole
33 structurally unsound; and

34 (6) The person owning, managing, or controlling the
35 authority utility pole may not require more make-ready
36 work than is required to meet applicable codes or industry
37 standards. Fees for make-ready work may not include costs
38 related to preexisting or prior damage or noncompliance.
39 Fees for make-ready work including any pole replacement
40 may not exceed the actual costs or the amount charged to
41 other communications service providers for similar work
42 and may not include any consultant fee or expense.

43 (b) For the purposes of a state-owned right-of-way
44 maintained by the Division of Highways, the commissioner
45 shall propose rules for legislative approval, in accordance
46 with the provisions of §29A-3-1 *et seq.* of this code, to
47 implement the provisions of this article.

48 (c) Application fees are subject to the following
49 requirements:

50 (1) An authority may not require a wireless provider to
51 pay any rates, fees, or compensation to the authority or other
52 person other than what is expressly authorized by this
53 chapter;

54 (2) An authority may charge an application fee for
55 collocation of small wireless facilities on an existing utility
56 pole not to exceed \$200 each for the first five small wireless
57 facilities in the same application and \$100 for each
58 additional small wireless facility in the same application. An
59 authority may adjust this fee 10 percent every five years,
60 rounded to the nearest five dollars;

61 (3) An authority may charge an application fee for the
62 installation, modification, or replacement of a utility pole
63 and the collocation of an associated small wireless facility
64 that are permitted uses in accordance with the specifications
65 in this chapter not to exceed \$250. An authority may adjust
66 this fee 10 percent every five years, rounded to the nearest
67 five dollars; and

68 (4) An authority may charge an application fee for the
69 installation, modification, or replacement of a utility pole
70 and the collocation of an associated small wireless facility
71 that is not a permitted use in accordance with the
72 specifications in this chapter not to exceed \$1,000. An
73 authority may adjust this fee 10 percent every five years,
74 rounded to the nearest five dollars.

§31H-2-4. Local authority; miscellaneous provisions.

1 (a) Nothing in this chapter may be construed to relieve
2 any person from any requirement:

3 (1) To obtain a franchise or a state-issued authorization
4 to offer cable television service; or

5 (2) To obtain any required permission to install, place,
6 maintain, or operate communications facilities, other than
7 small wireless facilities subject to this chapter. The
8 permitting procedures and authorizations set forth in this
9 chapter apply only to the placement of small wireless
10 facilities and associated utility poles, and do not authorize
11 the installation or operation of a wireline backhaul facility.

12 (b) Except as provided in this chapter or otherwise
13 specifically authorized by state or federal law, an authority
14 shall not adopt or enforce any regulations or requirements
15 on the placement or operation of communications facilities
16 in a right-of-way by a communications service provider
17 authorized by state or local law to operate in a right-of-way.

18 (c) Except as authorized by federal law, this chapter, and
19 municipal taxation ordinances authorizing collection of
20 business and occupation taxes since at least November 1,
21 1998, an authority shall not regulate any communications
22 services or impose or collect any tax, fee, or charge for the
23 provision of communications service over the
24 communications service provider's communications
25 facilities in a right-of-way, to the extent the communications
26 service provider is already paying the authority a fee for
27 access to the right-of-way.

28 (d) Subject to the provisions of this chapter and
29 applicable federal law, an authority may continue to
30 exercise zoning, land use, planning, and permitting
31 authority within its territorial boundaries with respect to
32 wireless support structures and utility poles; no authority
33 shall have or exercise any jurisdiction or authority over the
34 design, engineering, construction, installation, or operation
35 of any small wireless facility located in an interior structure
36 or upon the site of any campus, stadium, or athletic facility
37 not owned or controlled by the authority, other than to
38 comply with applicable codes; and an authority shall
39 evaluate the structure classification for wireless support
40 structures under the latest version of ANSI/TIA-222.
41 Nothing in this chapter authorizes the state or any political
42 subdivision, including an authority, to require wireless
43 facility deployment or to regulate wireless services.

44 (e) An authority may adopt an ordinance that makes
45 available to wireless providers rates, fees, and other terms
46 that comply with the provisions of this chapter. Subject to
47 the provisions of this section, in the absence of an ordinance
48 that fully complies with this chapter and until such a
49 compliant ordinance is adopted, if at all, wireless providers
50 may install and operate small wireless facilities and utility
51 poles under the requirements of this chapter. An authority
52 and a wireless provider may enter into a voluntary and
53 nondiscriminatory agreement implementing the provisions
54 of this chapter, but an authority may not require a wireless
55 provider to enter into such an agreement.

56 (f) An agreement or ordinance that does not fully
57 comply with this chapter may apply only to small wireless
58 facilities and associated utility poles that became
59 operational or were installed before the effective date of this
60 chapter. Such an agreement or ordinance may not be
61 renewed, or extended, unless it is modified to fully comply
62 with this chapter. An agreement or ordinance that applies to
63 small wireless facilities and associated utility poles that
64 became operational or were constructed before the effective

65 date of this chapter is invalid and unenforceable beginning
66 on the 181st day after the effective date of this chapter
67 unless it fully complies with this chapter. If an agreement or
68 ordinance is invalid in accordance with this subsection, in
69 the absence of an agreement or ordinance that fully
70 complies with this chapter and until such a compliant
71 agreement or ordinance is entered or adopted, small wireless
72 facilities and associated utility poles that become
73 operational or were constructed before the effective date of
74 this chapter may remain installed and be operated under the
75 requirements of this chapter.

76 (g) An agreement or ordinance that applies to small
77 wireless facilities and utility poles that become operational
78 on or after the effective date of this chapter is invalid and
79 unenforceable beginning on the effective date of this
80 chapter unless it fully complies with this chapter. If an
81 agreement or ordinance is invalid in accordance with this
82 subsection, in the absence of an agreement or ordinance that
83 fully complies with this chapter and until such a compliant
84 agreement or ordinance is entered or adopted, small wireless
85 facilities and utility poles may be installed and operated in
86 the right-of-way or become operational under the
87 requirements of this chapter.

88 (h) Any wireless provider who owns or operates small
89 wireless facilities or utility poles in the right-of-way shall
90 indemnify, protect, defend, and hold the authority and its
91 elected officials, officers, employees, agents, and volunteers
92 harmless against any and all claims, lawsuits, judgments,
93 costs, liens, losses, expenses, fees to include reasonable
94 attorney fees and costs of defense, proceedings, actions,
95 demands, causes of action, liability and suits of any kind and
96 nature, including personal or bodily injury or death,
97 property damage or other harm for which recovery of
98 damages is sought, to the extent that it is caused by the
99 negligence of the wireless provider who owns or operates
100 small wireless facilities or utility poles in the right-of-way,
101 any agent, officer, director, representative, employee,

102 affiliate, or subcontractor of the wireless provider, or their
103 respective officers, agents, employees, directors, or
104 representatives while installing, repairing, or maintaining
105 facilities in rights-of-way.

106 (i) Except for a wireless provider with an existing
107 franchise to occupy and operate in the rights-of-way, during
108 the period in which the wireless provider's facilities are
109 located on the authority improvements or rights-of-way, the
110 authority may require the wireless provider to carry, at the
111 wireless provider's own cost and expense, the following
112 insurance:

113 (1) Property insurance for its property's replacement
114 cost against all risks;

115 (2) Workers' compensation insurance, as required by
116 law; or

117 (3) Commercial general liability insurance with respect
118 to its activities on the authority improvements or rights-of-
119 way to afford minimum protection limits consistent with its
120 requirements of other users of authority improvements or
121 rights-of-way, including coverage for bodily injury and
122 property damage. An authority may require a wireless
123 provider to include the authority as an additional insured on
124 the commercial general liability policy and provide
125 certification and documentation of inclusion of the authority
126 in a commercial general liability policy as reasonably
127 required by the authority.

128 A wireless provider may self-insure all or a portion of
129 the insurance coverage and limit requirements required by
130 an authority. A wireless provider that self-insures is not
131 required, to the extent of the self-insurance, to comply with
132 the requirement for the naming of additional insureds under
133 this section. A wireless provider that elects to self-insure
134 shall provide to the authority evidence sufficient to
135 demonstrate its financial ability to self-insure the insurance
136 coverage and limits required by the authority.

137 (j) An authority may impose reasonable and
 138 nondiscriminatory requirements for bonds, escrow deposits,
 139 letters of credit, or any other type of financial surety to
 140 ensure removal of abandoned or unused wireless facilities
 141 or damage to the right-of-way or authority property caused
 142 by the wireless provider or its agent.

143 (k) On or before December 31, 2026, all Class I and
 144 Class II municipalities shall report to the Joint Committee
 145 on Government and Finance of the effects of the
 146 implementation of this article.



CHAPTER 43

(H. B. 3093 - By Delegates Cowles, Porterfield and Rohrbach)

[Passed March 1, 2019; in effect ninety days from passage.]
 [Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §8A-11-1 of the Code of West Virginia, 1931, as amended, relating to standards for factory-built homes; providing for building code requirements for manufactured housing to be the same as for requirements for other single-family homes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. SPECIAL PROVISIONS.

§8A-11-1. Standards for factory-built homes.

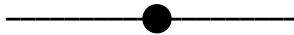
1 (a) Notwithstanding any existing provisions of law,
 2 municipal or county ordinance or state building code, the
 3 standards for factory-built homes, housing prototypes,
 4 subsystems, materials and components certified as
 5 acceptable by the federal Department of Housing and Urban

6 Development are considered acceptable and are approved
7 for use in housing construction in this state.

8 (b) Appropriate building code compliance
9 documentation attached to a factory-built home shall
10 constitute prima facie evidence that the products or
11 materials contained therein are acceptable.

12 (c) A governing body of a municipality or a county,
13 when enacting any ordinance or regulation for the purposes
14 of regulating the subdivision, development and use of land,
15 shall uniformly apply such design standards and associated
16 review and permitting procedures for factory-built and other
17 single-family constructed homes.

18 (d) Factory-built homes, like other types of homes, shall
19 be constructed and installed in conformity with the
20 requirements of 44 C.F.R. §60.3(1976) and any applicable
21 statute or rule relating to building in a flood zone.



CHAPTER 44

**(Com. Sub. for H. B. 2010 - By Delegates Kessinger,
Ellington, Hill, Summers, Pack, Storch, Rowan,
Sypolt, Harshbarger, Phillips and Capito)**

[Passed March 8, 2019; in effect from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §9-5-27; to amend
and reenact §49-1-206 of said code; to amend and reenact
§49-2-107, §49-2-113, and §49-2-708 of said code; to amend
said code by adding thereto two new sections, designated §49-
2-111a and §49-2-111b; and to amend and reenact §49-4-108,
§49-4-406, §49-4-413, §49-4-604, §49-4-608, §49-4-711,

§49-4-714 and §49-4-724 of said code, all relating to foster care; defining terms; transitioning the foster care population to a managed care organization; allowing the secretary to apply for waivers; setting out requirements for the managed care program; providing for an effective date; providing a sunset date; require the department to enter into certain types of contracts with child placing agencies; creating a state foster care ombudsman; setting out experience requirements for an ombudsman; providing duties and authority of the ombudsman; setting out preclusions for employment of certain department employees; providing for managed care employees allocation to foster care in West Virginia; providing for performance based contracting with child placement agencies; setting out procurement and contract requirements; requiring a study of kinship care; requiring the department to review certain legislative rules; extending the time to file legislative rules; extending the time a foster care certification is authorized; requiring home safety assessment to take place annually; prohibiting the removal of a child from a residential child care program in certain circumstances; providing exceptions to permit the removal of a child from a residential child care program; establishing payment rates for services; permitting those rates be exceeded when certain conditions are met; prohibiting the termination of parental rights solely based upon participation in a medically assisted treatment program; prohibiting the placement of a foster child in an out of state facility; providing exceptions to the placement of a foster child in an out of state facility; setting out standard assessments of certain juveniles; and requiring reporting.

Be it enacted by the Legislature of West Virginia:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-27. Transitioning foster care into managed care.

1 (a) “Eligible services” means acute care, including
2 medical, pharmacy, dental, and behavioral health services.

3 (b) The secretary shall transition to a capitated Medicaid
4 program for a child classified as a foster child and a child
5 placed in foster care under Title IV-E of the Social Security
6 Act who is living in the state by January 1, 2020. The
7 program shall be statewide, fully integrated, and risk based;
8 shall integrate Medicaid-reimbursed eligible services; and
9 shall align incentives to ensure the appropriate care is
10 delivered in the most appropriate place and time.

11 (c) The secretary shall make payments for the eligible
12 services, including home and community-based services,
13 using a managed care model.

14 (d) The secretary shall submit, if necessary, applications
15 to the United States Department of Health and Human
16 Services for waivers of federal Medicaid requirements that
17 would otherwise be violated in the implementation of the
18 program, and shall consolidate any additional waivers
19 where appropriate: *Provided*, That this subsection does not
20 apply to the Aged and Disabled Waiver, the
21 Intellectual/Developmental Disabilities Waiver, and the
22 Traumatic Brain Injury Waiver.

23 (e) If a selected managed care organization ceases to
24 contract with the Department of Health and Human Services
25 to provide Medicaid managed care services, it must provide
26 all patient records, including medical records, to the next
27 selected managed care organization to ensure the Eligible
28 Medicaid Beneficiaries do not experience an interruption in
29 care.

30 (f) In designing the program, the secretary shall ensure
31 that the program:

32 (1) Reduces fragmentation and offers a seamless
33 approach to meeting participants’ needs;

34 (2) Delivers needed supports and services in the most
35 integrated, appropriate, and cost-effective way possible;

36 (3) Offers a continuum of acute care services, which
37 includes an array of home and community-based options;

38 (4) Includes a comprehensive quality approach across
39 the entire continuum of care services; and

40 (5) Consult stakeholders in the program development
41 process, and the managed care organization that is awarded
42 the contract shall create a voluntary advisory group of
43 foster, adoptive, and kinship parents, which shall meet every
44 quarter for the first year following the effective date of the
45 changes made to this section during the 2019 Regular
46 Session of the Legislature and then every six months
47 thereafter, to discuss issues they are encountering with the
48 managed care organization and recommend solutions. The
49 managed care organization shall report on the
50 recommendations of the advisory group and address how
51 and why procedures have or have not changed based on
52 those recommendations. This report shall be submitted to
53 the secretary and the Legislative Oversight Commission on
54 Health and Human Resources Accountability as set forth in
55 §16-29E-1 *et seq.* of this code, and the public in a timely
56 fashion and shall be available on the managed care
57 organization's webpage.

58 (g) The department shall evaluate the transition to
59 managed care and shall collect and annually report on the
60 following items: the number of claims submitted, the
61 number of claims approved, the number of claims denied,
62 the number of claims appealed, the resolution of appealed
63 claims, the average time of an appeal, the average length of
64 stay in a child residential care center, and health outcomes.
65 The initial report will be filed by July 1, 2021, with the
66 Legislative Oversight Commission on Health and Human
67 Resources Accountability and the Foster Care Ombudsman
68 with a final report submitted July 1, 2023.

69 (h) The transition of foster care to managed care shall
70 terminate on June 30, 2024, unless cancelled by the
71 secretary at an earlier date.

72 (i) (1) The Office of the Inspector General shall employ
73 an independent foster care ombudsman, with experience as
74 a former foster parent or experience in the area of child
75 welfare;

76 (2) The duties of the ombudsman shall include, but are
77 not limited to, the following:

78 (A) Advocating for the rights of foster children and
79 foster parents;

80 (B) Participating in any procedure to investigate, and
81 resolve complaints filed on behalf of a foster child or foster
82 parent, relating to action, inaction or decisions of providers
83 of managed care services, or the representatives of such
84 providers, of public agencies, or of social service agencies,
85 which may adversely affect the health, safety, welfare and
86 rights of the foster child or foster parent;

87 (C) Monitoring the development and implementation of
88 federal, state and local legislation, regulations and policies
89 with respect to foster care services; and

90 (D) Establishing and maintaining a statewide uniform
91 reporting system to collect and analyze data relating to
92 complaints for the purpose of identifying and resolving
93 significant problems faced by foster children and foster
94 parents as a class. The data shall be submitted to the Bureau
95 of Children and Families within the Department of Health
96 and Human Resources and the Legislative Oversight
97 Commission on Health and Human Resources
98 Accountability on a quarterly basis;

99 (3) The ombudsman shall participate in ongoing
100 training programs related to his or her duties or
101 responsibilities.

102 (j) An employee of the department who, as a function of
103 that employment, has engaged in the development of any
104 contract developed pursuant to the requirements of this
105 section may not for a period of two years thereafter be
106 employed by any agency or company that has benefitted or
107 stands to benefit directly from a contract between the
108 department and that agency or company.

109 (k) Any managed care company selected as the
110 managed care contractor pursuant to the provisions of this
111 article shall have at least 80 percent of the total full-time
112 equivalent positions allocated to manage care of foster
113 children in West Virginia according to the contract must
114 have a primary work place in the State of West Virginia.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-206. Definitions related, but not limited to, child advocacy, care, residential, and treatment programs.

1 When used in this chapter, terms defined in this section
2 have the meanings ascribed to them that relate to, but are
3 not limited to, child advocacy, care, residential, and
4 treatment programs, except in those instances where a
5 different meaning is provided or the context in which the
6 word used clearly indicates that a different meaning is
7 intended.

8 “Child Advocacy Center (CAC)” means a community-
9 based organization that is a member in good standing with
10 the West Virginia Child Abuse Network, Inc., as set forth in
11 §49-3-101 of this code.

12 “Child care” means responsibilities assumed and
13 services performed in relation to a child’s physical,
14 emotional, psychological, social, and personal needs and the
15 consideration of the child’s rights and entitlements, but does
16 not include secure detention or incarceration under the

17 jurisdiction of the Division of Corrections and
18 Rehabilitation pursuant to §49-2-901 *et seq.* of this code. It
19 includes the provision of child care services or residential
20 services.

21 “Child care center” means a facility maintained by the
22 state or any county or municipality thereof, or any agency
23 or facility maintained by an individual, firm, corporation,
24 association, or organization, public or private for the care of
25 13 or more children for child care services in any setting, if
26 the facility is open for more than 30 days per year per child.

27 “Child care services” means direct care and protection
28 of children during a portion of a 24- hour day outside of the
29 child’s own home which provides experiences to children
30 that foster their healthy development and education.

31 “Child placing agency” means a child welfare agency
32 organized for the purpose of placing children in private
33 family homes for foster care or for adoption. The function
34 of a child placing agency may include the investigation and
35 certification of foster family homes and foster family group
36 homes as provided in this chapter. The function of a child
37 placing agency may also include the supervision of children
38 who are 16 or 17 years old and living in unlicensed
39 residences.

40 “Child welfare agency” means any agency or facility
41 maintained by the state or any county or municipality
42 thereof, or any agency or facility maintained by an
43 individual, firm, corporation, association, or organization,
44 public or private, to receive children for care and
45 maintenance or for placement in residential care facilities,
46 including, without limitation, private homes or any facility
47 that provides care for unmarried mothers and their children.
48 A child welfare agency does not include juvenile detention
49 facilities or juvenile correctional facilities operated by or
50 under contract with the Division of Corrections and
51 Rehabilitation, pursuant to §49-2-901 *et seq.* of this code,

52 nor any other facility operated by that division for the secure
53 housing or holding of juveniles committed to its custody.

54 “Community based” means a facility, program, or
55 service located near the child’s home or family and
56 involving community participation in planning, operation,
57 and evaluation and which may include, but is not limited to,
58 medical, educational, vocational, social, and psychological
59 guidance, training, special education, counseling, substance
60 abuse, and any other treatment or rehabilitation services.

61 “Community-based juvenile probation sanctions”
62 means any of a continuum of nonresidential accountability
63 measures, programs, and sanctions in response to a
64 technical violation of probation, as part of a system of
65 community-based juvenile probation sanctions and
66 incentives, that may include, but are not limited to:

67 (A) Electronic monitoring;

68 (B) Drug and alcohol screening, testing, or monitoring;

69 (C) Youth reporting centers;

70 (D) Reporting and supervision requirements;

71 (E) Community service; and

72 (F) Rehabilitative interventions such as family
73 counseling, substance abuse treatment, restorative justice
74 programs, and behavioral or mental health treatment.

75 “Community services” means nonresidential prevention
76 or intervention services or programs that are intended to
77 reduce delinquency and future court involvement.

78 “Evidence-based practices” means policies, procedures,
79 programs, and practices demonstrated by research to
80 reliably produce reductions in the likelihood of reoffending.

81 “Facility” means a place or residence, including
82 personnel, structures, grounds, and equipment used for the

83 care of a child or children on a residential or other basis for
84 any number of hours a day in any shelter or structure
85 maintained for that purpose. Facility does not include any
86 juvenile detention facility or juvenile correctional facility
87 operated by or under contract with the Division of
88 Corrections and Rehabilitation for the secure housing or
89 holding of juveniles committed to its custody.

90 “Family child care facility” means any facility which is
91 used to provide nonresidential child care services for
92 compensation for seven to 12 children, including children
93 who are living in the household, who are under six years of
94 age. A facility may be in a provider’s residence or a separate
95 building.

96 “Family child care home” means a facility which is used
97 to provide nonresidential child care services for
98 compensation in a provider’s residence. The provider may
99 care for four to six children at one time, including children
100 who are living in the household, who are under six years of
101 age.

102 “Family resource network” means:

103 (A) A local community organization charged with
104 service coordination, needs and resource assessment,
105 planning, community mobilization, and evaluation, and
106 which has met the following criteria:

107 (i) Agreeing to a single governing entity;

108 (ii) Agreeing to engage in activities to improve service
109 systems for children and families within the community;

110 (iii) Addressing a geographic area of a county or two or
111 more contiguous counties;

112 (iv) Having nonproviders, which include family
113 representatives and other members who are not employees
114 of publicly funded agencies, as the majority of the members

115 of the governing body, and having family representatives as
116 the majority of the nonproviders;

117 (v) Having representatives of local service agencies,
118 including, but not limited to, the public health department,
119 the behavioral health center, the local health and human
120 resources agency, and the county school district, on the
121 governing body; and

122 (vi) Accepting principles consistent with the cabinet's
123 mission as part of its philosophy.

124 (B) A family resource network may not provide direct
125 services, which means to provide programs or services
126 directly to children and families.

127 "Family support", for the purposes of §49-2-601 *et seq.*
128 of this code, means goods and services needed by families
129 to care for their family members with developmental
130 disabilities and to enjoy a quality of life comparable to other
131 community members.

132 "Family support program" means a coordinated system
133 of family support services administered by the Department
134 of Health and Human Resources through contracts with
135 behavioral health agencies throughout the state.

136 "Foster family home" means a private residence which
137 is used for the care on a residential basis of no more than
138 five children who are unrelated by blood, marriage, or
139 adoption to any adult member of the household.

140 "Health care and treatment" means:

141 (A) Developmental screening;

142 (B) Mental health screening;

143 (C) Mental health treatment;

144 (D) Ordinary and necessary medical and dental
145 examination and treatment;

146 (E) Preventive care including ordinary immunizations,
147 tuberculin testing, and well-child care; and

148 (F) Nonemergency diagnosis and treatment. However,
149 nonemergency diagnosis and treatment does not include an
150 abortion.

151 “Home-based family preservation services” means
152 services dispensed by the Department of Health and Human
153 Resources or by another person, association, or group who
154 has contracted with that division to dispense services when
155 those services are intended to stabilize and maintain the
156 natural or surrogate family in order to prevent the placement
157 of children in substitute care. There are two types of home-
158 based family preservation services and they are as follows:

159 (A) Intensive, short-term intervention of four to six
160 weeks; and

161 (B) Home-based, longer-term after care following
162 intensive intervention.

163 “Informal family child care” means a home that is used
164 to provide nonresidential child care services for
165 compensation for three or fewer children, including children
166 who are living in the household who are under six years of
167 age. Care is given in the provider’s own home to at least one
168 child who is not related to the caregiver.

169 “Needs assessment” means an evidence-informed
170 assessment which identifies the needs a child or family has,
171 which, if left unaddressed, will likely increase the chance of
172 reoccurring.

173 “Nonsecure facility” means any public or private
174 residential facility not characterized by construction fixtures
175 designed to physically restrict the movements and activities
176 of individuals held in lawful custody in that facility and
177 which provides its residents access to the surrounding
178 community with supervision.

179 “Nonviolent misdemeanor offense” means a
180 misdemeanor offense that does not include any of the
181 following:

182 (A) An act resulting in bodily injury or death;

183 (B) The use of a weapon in the commission of the
184 offense;

185 (C) A domestic abuse offense involving a significant or
186 likely risk of harm to a family member or household
187 member;

188 (D) A criminal sexual conduct offense; or

189 (E) Any offense for driving under the influence of
190 alcohol or drugs.

191 “Out-of-home placement” means a post-adjudication
192 placement in a foster family home, group home, nonsecure
193 facility, emergency shelter, hospital, psychiatric residential
194 treatment facility, staff secure facility, hardware secure
195 facility, detention facility, or other residential placement
196 other than placement in the home of a parent, custodian, or
197 guardian.

198 “Out-of-school time” means a child care service which
199 offers activities to children before and after school, on
200 school holidays, when school is closed due to emergencies,
201 and on school calendar days set aside for teacher activities.

202 “Placement” means any temporary or permanent
203 placement of a child who is in the custody of the state in any
204 foster home, group home, or other facility or residence.

205 “Pre-adjudicatory community supervision” means
206 supervision provided to a youth prior to adjudication, for a
207 period of supervision up to one year for an alleged status or
208 delinquency offense.

209 “Regional family support council” means the council
210 established by the regional family support agency to carry
211 out the responsibilities specified in §49-2-601 *et seq.* of this
212 code.

213 “Relative family child care” means a home that provides
214 nonresidential child care services only to children related to
215 the caregiver. The caregiver is a grandparent, great
216 grandparent, aunt, uncle, great-aunt, great-uncle, or adult
217 sibling of the child or children receiving care. Care is given
218 in the provider’s home.

219 “Residential services” means child care which includes
220 the provision of nighttime shelter and the personal
221 discipline and supervision of a child by guardians,
222 custodians, or other persons or entities on a continuing or
223 temporary basis. It may include care or treatment, or both,
224 for transitioning adults. Residential services does not
225 include or apply to any juvenile detention facility or juvenile
226 correctional facility operated by the Division of Corrections
227 and Rehabilitation, created pursuant to this chapter, for the
228 secure housing or holding of juveniles committed to its
229 custody.

230 “Risk and needs assessment” means a validated,
231 standardized actuarial tool which identifies specific risk
232 factors that increase the likelihood of reoffending and the
233 factors that, when properly addressed, can reduce the
234 likelihood of reoffending.

235 “Secure facility” means any public or private residential
236 facility which includes construction fixtures designed to
237 physically restrict the movements and activities of juveniles
238 or other individuals held in lawful custody in such facility.

239 “Staff secure facility” means any public or private
240 residential facility characterized by staff restrictions of the
241 movements and activities of individuals held in lawful
242 custody in such facility, and which limits its residents’
243 access to the surrounding community, but is not

244 characterized by construction fixtures designed to
245 physically restrict the movements and activities of residents.

246 “Standardized screener” means a brief, validated
247 nondiagnostic inventory or questionnaire designed to
248 identify juveniles in need of further assessment for medical,
249 substance abuse, emotional, psychological, behavioral, or
250 educational issues, or other conditions.

251 “State family support council” means the council
252 established by the Department of Health and Human
253 Resources pursuant to §49-2-601 *et seq.* of this code to carry
254 out the responsibilities specified in §49-2-101 *et seq.* of this
255 code.

256 “Time-limited reunification services” means individual,
257 group, and family counseling, inpatient, residential, or
258 outpatient substance abuse treatment services, mental health
259 services, assistance to address domestic violence, services
260 designed to provide temporary child care, and therapeutic
261 services for families, including crisis nurseries and
262 transportation to or from those services, provided during 15
263 of the most recent 22 months a child or juvenile has been in
264 foster care, as determined by the earlier date of the first
265 judicial finding that the child is subjected to abuse or
266 neglect, or the date which is 60 days after the child or
267 juvenile is removed from home.

268 “Technical violation” means an act that violates the
269 terms or conditions of probation or a court order that does
270 not constitute a new delinquent offense.

271 “Truancy diversion specialist” means a school-based
272 probation officer or truancy social worker within a school
273 or schools who, among other responsibilities, identifies
274 truants and the causes of the truant behavior, and assists in
275 developing a plan to reduce the truant behavior prior to court
276 involvement.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**§49-2-107. Foster-home care; minimum standards; certificate of operation; inspection.**

1 (a) The department shall establish minimum standards
2 for foster-home care to which all certified foster homes must
3 conform by legislative rule. Any home that conforms to the
4 standards of care set by the department shall receive a
5 certificate of operation.

6 (b) The certificate of operation shall be in force for three
7 years from the date of issuance and may be renewed unless
8 revoked because of willful violation of this chapter.

9 (c) The certificate shall show the name of the person or
10 persons authorized to conduct the home, its exact location
11 and the number of children that may be received and cared
12 for at one time and other information as set forth in
13 legislative rule. No certified foster home shall provide care
14 for more children than are specified in the certificate.

15 (d) No unsupervised foster home shall be certified until
16 an investigation of the home and its standards of care has
17 been made by the department or by a licensed child welfare
18 agency serving as a representative of the department.

§49-2-111a. Performance based contracting for child placing agencies.

1 (a) For purposes of this section:

2 (1) "Child" means:

3 (A) A person less than 18 years of age; or

4 (B) A person age 18 to 21 years who is eligible to
5 receive the extended foster care services.

6 (2) "Child-placing agency" means an agency licensed
7 by the department to place a child in a foster care home.

8 (3) "Department" means the Department of Health and
9 Human Resources.

10 (4) “Evidence-based” means a program or practice that
11 is cost-effective and includes at least two randomized or
12 statistically controlled evaluations that have demonstrated
13 improved outcomes for its intended population.

14 (5) “Performance-based contracting” means structuring
15 all aspects of the procurement of services around the
16 purpose of the work to be performed and the desired results
17 with the contract requirements set forth in clear, specific,
18 and objective terms with measurable outcomes and linking
19 payment for services to contractor performance.

20 (6) “Promising practice” means a practice that presents,
21 based upon preliminary information, potential for becoming
22 a research-based or consensus-based practice.

23 (7) “Research-based” means a program or practice that
24 has some research demonstrating effectiveness, but that
25 does not yet meet the standard of evidence-based practices.

26 (b) No later than December 1, 2020, the department
27 shall enter into performance-based contracts with child
28 placing agencies.

29 (c) In conducting the procurement, the department shall
30 actively consult with other state agencies and other entities
31 with expertise in performance-based contracting with child
32 placing agencies.

33 (d) The procurement process shall be developed and
34 implemented in a manner that complies with applicable
35 provisions of this code.

36 (e) The procurement and resulting contracts shall
37 include, but are not limited to, the following:

38 (1) Adequate capacity to meet the anticipated service
39 needs in the contracted service area of the child placing
40 agency;

41 (2) The use of evidence-based, research-based, and
42 promising practices, where appropriate, including fidelity
43 and quality assurance provisions;

44 (3) Child placing agency data reporting, including data
45 on performance and service outcomes; including but not
46 limited to:

47 (A) Safety outcomes;

48 (B) Permanency outcomes;

49 (C) Well-being outcomes;

50 (D) Incentives earned; and

51 (E) Recruitment and retention of foster parents; and

52 (4) A hold harmless period to determine a baseline for
53 evaluation.

54 (f) As part of the procurement process under this
55 section, the department shall issue the request for proposals
56 no later than July 1, 2020. The department shall notify the
57 apparently successful bidders no later than September 1,
58 2020.

59 (g) Performance-based payment methodologies must be
60 used in child placing agency contracting. Performance
61 measures should relate to successful engagement by a child
62 or parent in services included in their case plan, and
63 resulting improvement in identified problem behaviors and
64 interactions. For the first year of implementation of
65 performance-based contracting, the department may
66 transfer financial risk for the provision of services to the
67 child placing agency only to the limited extent necessary to
68 implement a performance-based payment methodology,
69 such as phased payment for services. However, the
70 department may develop a shared savings methodology
71 through which the child placing agency will receive a
72 defined share of any savings that result from improved

73 performance. If the department receives a Title IV-E
74 waiver, the shared savings methodology must be consistent
75 with the terms of the waiver. If a shared savings
76 methodology is adopted, the child placing agency shall
77 reinvest the savings in enhanced services to better meet the
78 needs of the families and children they serve.

79 (h) The department shall actively monitor the child
80 placing agency's compliance with the terms of contracts
81 executed under this section.

82 (i) The use of performance-based contracts under this
83 section shall be done in a manner that does not adversely
84 affect the state's ability to continue to obtain federal funding
85 for child welfare-related functions currently performed by
86 the state and with consideration of options to further
87 maximize federal funding opportunities and increase
88 flexibility in the use of such funds, including use for
89 preventive and in-home child welfare services.

90 (j) The department shall report the performance of the
91 child placing agency to the Legislative Oversight
92 Commission on Health and Human Resources
93 Accountability by December 31, annually.

§49-2-111b. Study of kinship foster care families.

1 (a) The department shall conduct a study and make
2 recommendations for improving services provided for
3 kinship foster care families. This study shall include at a
4 minimum:

5 (1) A review of best practices in other states;

6 (2) A proposal for an alternate system of regulation for
7 kinship foster care that includes the same reimbursement as
8 other foster care families as well as a reasonable time period
9 for obtaining certification;

10 (3) An evaluation of what training and supports are
11 needed to ensure that kinship care homes are successful.

12 (b) The results of this shall be shared with all members
13 of the Legislature by October 1, 2019.

§49-2-113. Residential child-care centers; licensure, certification, approval and registration; requirements.

1 (a) Any person, corporation or child welfare agency,
2 other than a state agency, which operates a residential child-
3 care center shall obtain a license from the department.

4 (b) Any residential child-care facility, day-care center
5 or any child-placing agency operated by the state shall
6 obtain approval of its operations from the secretary.

7 (c) Any family day-care facility which operates in this
8 state, including family day-care facilities approved by the
9 department for receipt of funding, shall obtain a statement
10 of certification from the department.

11 (d) Every family day-care home which operates in this
12 state, including family day-care homes approved by the
13 department for receipt of funding, shall obtain a certificate
14 of registration from the department. The facilities and
15 placing agencies shall maintain the same standards of care
16 applicable to licensed facilities, centers or placing agencies
17 of the same category.

18 (e) This section does not apply to:

19 (1) A kindergarten, preschool or school education
20 program which is operated by a public school or which is
21 accredited by the state Department of Education or any
22 other kindergarten, preschool or school programs which
23 operate with sessions not exceeding four hours per day for
24 any child;

25 (2) An individual or facility which offers occasional
26 care of children for brief periods while parents are shopping,
27 engaging in recreational activities, attending religious
28 services or engaging in other business or personal affairs;

29 (3) Summer recreation camps operated for children
30 attending sessions for periods not exceeding 30 days;

31 (4) Hospitals or other medical facilities which are
32 primarily used for temporary residential care of children for
33 treatment, convalescence or testing;

34 (5) Persons providing family day care solely for
35 children related to them;

36 (6) Any juvenile detention facility or juvenile
37 correctional facility operated by or under contract with the
38 Division of Corrections and Rehabilitation for the secure
39 housing or holding of juveniles committed to its custody;

40 (7) Any out-of-school time program that has been
41 awarded a grant by the West Virginia Department of
42 Education to provide out-of-school time programs to
43 kindergarten through 12th grade students when the program
44 is monitored by the West Virginia Department of
45 Education; or

46 (8) Any out-of-school time program serving children six
47 years of age or older and meets all of the following
48 requirements, or is an out-of-school time program that is
49 affiliated and in good standing with a national
50 congressionally chartered organization or is operated by a
51 county parks and recreation commission, boards and
52 municipalities and meets all of the following requirements:

53 (A) The program is located in a facility that meets all
54 fire and health codes;

55 (B) The program performs state and federal background
56 checks on all volunteers and staff;

57 (C) The programs' primary source of funding is not
58 from fees for service except for programs operated by
59 county parks and recreation commissions, boards and
60 municipalities; and

61 (D) The program has a formalized monitoring system in
62 place.

63 (f) The secretary is authorized to issue an emergency
64 rule relating to conducting a survey of existing facilities in
65 this state in which children reside on a temporary basis in
66 order to ascertain whether they should be subject to
67 licensing under this article or applicable licensing
68 provisions relating to behavioral health treatment providers.

69 (g) Any informal family child-care home or relative
70 family child-care home may voluntarily register and obtain
71 a certificate of registration from the department.

72 (h) All facilities or programs that provide out-of-school
73 time care shall register with the department upon
74 commencement of operations and on an annual basis
75 thereafter. The department shall obtain information, such as
76 the name of the facility or program, the description of the
77 services provided and any other information relevant to the
78 determination by the department as to whether the facility
79 or program meets the criteria for exemption under this
80 section.

81 (i) Any child-care service that is licensed or receives a
82 certificate of registration shall have a written plan for
83 evacuation in the event of fire, natural disaster or other
84 threatening situation that may pose a health or safety hazard
85 to the children in the child-care service.

86 (1) The plan shall include, but not be limited to:

87 (A) A designated relocation site and evacuation;

88 (B) Procedures for notifying parents of the relocation
89 and ensuring family reunification;

90 (C) Procedures to address the needs of individual
91 children including children with special needs;

92 (D) Instructions relating to the training of staff or the
93 reassignment of staff duties, as appropriate;

94 (E) Coordination with local emergency management
95 officials; and

96 (F) A program to ensure that appropriate staff are
97 familiar with the components of the plan.

98 (2) A child-care service shall update the evacuation plan
99 by December 31 of each year. If a child-care service fails to
100 update the plan, no action shall be taken against the child-
101 care services license or registration until notice is provided
102 and the child-care service is given 30 days after the receipt
103 of notice to provide an updated plan.

104 (3) A child-care service shall retain an updated copy of
105 the plan for evacuation and shall provide notice of the plan
106 and notification that a copy of the plan will be provided
107 upon request to any parent, custodian or guardian of each
108 child at the time of the child's enrollment in the child-care
109 service and when the plan is updated.

110 (4) All child-care centers and family child-care facilities
111 shall provide the plan and each updated copy of the plan to
112 the Director of the Office of Emergency Services in the
113 county where the center or facility is located.

114 (j) A residential child care center which has entered into
115 a contract with the department to provide services to a
116 certain number of foster children, shall accept any foster
117 child who meets the residential child care center's program
118 criteria, if the residential child care center has not met its
119 maximum capacity as provided for in the contract. Any
120 residential child-care center who has entered into a contract
121 with the department may not discharge any child in its
122 program, except as provided in the contract, including that
123 if the youth does not meet the residential treatment level and
124 target population, the provider shall request a MDT and
125 work toward an alternative placement.

§49-2-708. Rule-making authority.

1 (a) The Secretary of the Department of Health and
2 Human Resources is authorized to propose rules for
3 legislative approval necessary to implement this article in
4 accordance with §29A-3-1 *et seq.* of this code.

5 (b) The rules:

6 (1) Shall create a three year certification period for a
7 foster home, unless a substantial change occurs. A home
8 safety assessment is performed at least annually. The
9 department has sole authority to determine if a substantial
10 change has occurred;

11 (2) Shall require that a criminal background check be
12 conducted at the time of the recertification;

13 (3) May not prevent the placement or cause the removal
14 of a foster child for cosmetic damage to a residence.
15 “Cosmetic damages” means damage that does not affect the
16 safety or wellbeing of a child;

17 (4) Shall permit the use of dedicated sleeping spaces as
18 appropriate for the child’s needs and age, and similar to the
19 sleeping spaces for other household members; and

20 (5) Shall review and update the legislative rules while
21 considering normalcy and the reasonable and prudent parent
22 standard.

23 (c) Notwithstanding the time frames in §29A-3-1 *et*
24 *seq.*, of this code the department shall revise the foster care
25 legislative rules and shall submit for review and approval to
26 the Rule-Making Review Committee by October 31, 2019.

ARTICLE 4. COURT ACTIONS.**§49-4-108. Payment of services.**

1 (a) At any time during any proceedings brought
2 pursuant to this chapter, the court may upon its own motion,

3 or upon a motion of any party, order the Department of
4 Health and Human Resources to pay the Medicaid rates for
5 professional services rendered by a health care professional
6 to a child or other party to the proceedings. Professional
7 services include, but are not limited to, treatment, therapy,
8 counseling, evaluation, report preparation, consultation and
9 preparation of expert testimony. A health care professional
10 shall be paid by the Department of Health and Human
11 Resources upon completion of services and submission of a
12 final report or other information and documentation as
13 required by the policies implemented by the Department of
14 Health and Human Resources: *Provided*, That if the service
15 is covered by Medicaid and the service is not provided
16 within 30 days, the court may order the service to be
17 provided by a provider at a rate higher than the Medicaid
18 rate. The department may object and request to be heard,
19 after which the court shall issue findings of fact and
20 conclusions of law supporting its decision.

21 (b) At any time during any proceeding brought pursuant
22 to this chapter, the court may upon its own motion, or upon
23 a motion of any party, order the Department of Health and
24 Human Resources to pay for socially necessary services
25 rendered by an entity who has agreed to comply with §9-2-
26 6(21) of this code. The Department of Health and Human
27 Resources shall set the reimbursement rates for the socially
28 necessary services: *Provided*, That if services are not
29 provided within 30 days, the court may order a service to be
30 provided by a provider at a rate higher than the department
31 established rate. The department may object and request to
32 be heard, after which the court shall issue findings of fact
33 and conclusions of law supporting its decision.

**§49-4-406. Multidisciplinary treatment process for status
offenders or delinquents; requirements; custody; procedure;
reports; cooperation; inadmissibility of certain statements.**

1 (a) When a juvenile is adjudicated as a status offender
2 pursuant to §49-4-711 of this code, the Department of
3 Health and Human Resources shall promptly convene a

4 multidisciplinary treatment team and conduct an
5 assessment, utilizing a standard uniform comprehensive
6 assessment instrument or protocol, including a needs
7 assessment, to determine the juvenile's mental and physical
8 condition, maturity and education level, home and family
9 environment, rehabilitative needs and recommended service
10 plan, which shall be provided in writing to the court and
11 team members. Upon completion of the assessment, the
12 treatment team shall prepare and implement a
13 comprehensive, individualized service plan for the juvenile.

14 (b) When a juvenile is adjudicated as a delinquent or has
15 been granted a pre-adjudicatory community supervision
16 period pursuant to §49-4-708 of this code, the court, either
17 upon its own motion or motion of a party, may require the
18 Department of Health and Human Resources to convene a
19 multidisciplinary treatment team and conduct an
20 assessment, utilizing a standard uniform comprehensive
21 assessment instrument or protocol, including a needs
22 assessment, to determine the juvenile's mental and physical
23 condition, maturity and education level, home and family
24 environment, rehabilitative needs and recommended service
25 plan, which shall be provided in writing to the court and
26 team members. A referral to the Department of Health and
27 Human Resources to convene a multidisciplinary treatment
28 team and to conduct such an assessment shall be made when
29 the court is considering placing the juvenile in the
30 department's custody or placing the juvenile out-of-home at
31 the department's expense pursuant to §49-4-714 of this
32 code. In any delinquency proceeding in which the court
33 requires the Department of Health and Human Resources to
34 convene a multidisciplinary treatment team, the probation
35 officer shall notify the department at least 15 working days
36 before the court proceeding in order to allow the department
37 sufficient time to convene and develop an individualized
38 service plan for the juvenile.

39 (c) When a juvenile has been adjudicated and
40 committed to the custody of the Director of the Division of
41 Corrections and Rehabilitation, including those cases in

42 which the juvenile has been committed for examination and
43 diagnosis, or the court considers commitment for
44 examination and diagnosis, the Division of Corrections and
45 Rehabilitation shall promptly convene a multidisciplinary
46 treatment team and conduct an assessment, utilizing a
47 standard uniform comprehensive assessment instrument or
48 protocol, including a needs assessment, to determine the
49 juvenile's mental and physical condition, maturity and
50 education level, home and family environment,
51 rehabilitative needs and recommended service plan. Upon
52 completion of the assessment, the treatment team shall
53 prepare and implement a comprehensive, individualized
54 service plan for the juvenile, which shall be provided in
55 writing to the court and team members. In cases where the
56 juvenile is committed as a post-sentence disposition to the
57 custody of the Division of Corrections and Rehabilitation,
58 the plan shall be reviewed quarterly by the multidisciplinary
59 treatment team. Where a juvenile has been detained in a
60 facility operated by the Division of Corrections and
61 Rehabilitation without an active service plan for more than
62 60 days, the director of the facility may call a
63 multidisciplinary team meeting to review the case and
64 discuss the status of the service plan.

65 (d)(1) The rules of juvenile procedure shall govern the
66 procedure for obtaining any assessment of a juvenile,
67 preparing an individualized service plan and submitting the
68 plan and any assessment to the court.

69 (2) In juvenile proceedings conducted pursuant to §49-
70 4-701 *et seq.* of this code, the following representatives shall
71 serve as members and attend each meeting of the
72 multidisciplinary treatment team, so long as they receive
73 notice at least seven days prior to the meeting:

74 (A) The juvenile;

75 (B) The juvenile's case manager in the Department of
76 Health and Human Resources or the Division of Corrections
77 and Rehabilitation;

- 78 (C) The juvenile's parent, guardian or custodian;
- 79 (D) The juvenile's attorney;
- 80 (E) Any attorney representing a member of the
81 multidisciplinary treatment team;
- 82 (F) The prosecuting attorney or his or her designee;
- 83 (G) The county school superintendent or the
84 superintendent's designee;
- 85 (H) A treatment or service provider with training and
86 clinical experience coordinating behavioral or mental health
87 treatment; and
- 88 (I) Any other person or agency representative who may
89 assist in providing recommendations for the particular needs
90 of the juvenile and family, including domestic violence
91 service providers. In delinquency proceedings, the
92 probation officer shall be a member of a multidisciplinary
93 treatment team. When appropriate, the juvenile case
94 manager in the Department of Health and Human Resources
95 and the Division of Corrections and Rehabilitation shall
96 cooperate in conducting multidisciplinary treatment team
97 meetings when it is in the juvenile's best interest.
- 98 (3) Prior to disposition, in each case in which a
99 treatment planning team has been convened, the team shall
100 advise the court as to the types of services the team has
101 determined are needed and type of placement, if any, which
102 will best serve the needs of the child. If the team determines
103 that an out-of-home placement will best serve the needs of
104 the child, the team shall first consider placement at facilities
105 or programs located within the state. The team may only
106 recommend placement in an out-of-state facility if it
107 concludes, after considering the best interests and overall
108 needs of the child, that there are no available and suitable
109 in-state facilities which can satisfactorily meet the specific
110 needs of the child. The multidisciplinary treatment team
111 shall also determine and advise the court as to the individual

112 treatment and rehabilitation plan recommended for the child
113 for either out-of-home placement or community
114 supervision. The plan may focus on reducing the likelihood
115 of reoffending, requirements for the child to take
116 responsibility for his or her actions, completion of evidence-
117 based services or programs or any other relevant goal for the
118 child. The plan may also include opportunities to
119 incorporate the family, custodian or guardian into the
120 treatment and rehabilitation process.

121 (4) The multidisciplinary treatment team shall submit
122 written reports to the court as required by applicable law or
123 by the court, shall meet with the court at least every three
124 months, as long as the juvenile remains in the legal or
125 physical custody of the state, and shall be available for
126 status conferences and hearings as required by the court.
127 The multidisciplinary treatment team shall monitor progress
128 of the plan identified in subdivision (3) of this subsection
129 and review progress of the plan at the regular meetings held
130 at least every three months pursuant to this section, or at
131 shorter intervals, as ordered by the court, and shall report to
132 the court on the progress of the plan or if additional
133 modification is necessary.

134 (5) In any case in which a juvenile has been placed out
135 of his or her home except for a temporary placement in a
136 shelter or detention center, the multidisciplinary treatment
137 team shall cooperate with the state agency in whose custody
138 the juvenile is placed to develop an after-care plan. The
139 rules of juvenile procedure and §49-4-409 of this code
140 govern the development of an after-care plan for a juvenile,
141 the submission of the plan to the court and any objection to
142 the after-care plan.

143 (6) If a juvenile respondent admits the underlying
144 allegations of the case initiated pursuant to §49-4-701
145 through §49-4-725 of this code, in the multidisciplinary
146 treatment planning process, his or her statements may not
147 be used in any juvenile or criminal proceedings against the
148 juvenile, except for perjury or false swearing.

§49-4-413. Individualized case planning.

1 (a) For any juvenile ordered to probation supervision
2 pursuant to §49-4-714 of this code, the probation officer
3 assigned to the juvenile shall develop and implement an
4 individualized case plan in consultation with the juvenile's
5 parents, guardian or custodian, and other appropriate
6 parties, and based upon the results of a needs assessment
7 conducted within 90 days prior to the disposition to
8 probation. The probation officer shall work with the
9 juvenile and his or her family, guardian or custodian to
10 implement the case plan following disposition. At a
11 minimum, the case plan shall:

12 (1) Identify the actions to be taken by the juvenile and,
13 if appropriate, the juvenile's parents, guardian or custodian
14 to ensure future lawful conduct and compliance with the
15 court's disposition order; and

16 (2) Identify the services to be offered and provided to
17 the juvenile and, if appropriate, the juvenile's parents,
18 guardian or custodian and may include services to address:
19 Mental health and substance abuse issues; education;
20 individual, group and family counseling services;
21 community restoration; or other relevant concerns identified
22 by the probation officer.

23 (b) For any juvenile disposed to an out-of-home
24 placement with the department, the department shall ensure
25 that the residential service provider develops and
26 implements an individualized case plan based upon the
27 recommendations of the multidisciplinary team pursuant to
28 §49-4-406 of this code and the results of a needs assessment.
29 At a minimum, the case plan shall include:

30 (1) Specific treatment goals and the actions to be taken
31 by the juvenile in order to demonstrate satisfactory
32 attainment of each goal;

33 (2) The services to be offered and provided by the
34 residential service providers; and

35 (3) A detailed plan designed to assure appropriate
36 reintegration of the juvenile to his or her family, guardian,
37 school and community following the satisfactory
38 completion of the case plan treatment goals, including a
39 protocol and timeline for engaging the parents, guardians or
40 custodians prior to the release of the juvenile.

41 (c) For any juvenile committed to the Division of
42 Corrections and Rehabilitation, the Division of Corrections
43 and Rehabilitation shall develop and implement an
44 individualized case plan based upon the recommendations
45 made to the court by the multidisciplinary team pursuant to
46 §49-4-406(c) of this code and the results of a risk and needs
47 assessment. At a minimum, the case plan shall include:

48 (1) Specific correctional goals and the actions to be
49 taken by the juvenile to demonstrate satisfactory attainment
50 of each goal;

51 (2) The services to be offered and provided by the
52 Division of Corrections and Rehabilitation and any
53 contracted service providers; and

54 (3) A detailed plan designed to assure appropriate
55 reintegration of the juvenile to his or her family, guardian,
56 school and community following the satisfactory
57 completion of the case plan treatment goals, including a
58 protocol and timeline for engaging the parents, guardians or
59 custodians prior to the release of the juvenile.

§49-4-604. Disposition of neglected or abused children; case plans; dispositions; factors to be considered; reunification; orders; alternative dispositions.

1 (a) *Child and family case plans.* — Following a
2 determination pursuant to §49-4-602 of this code where
3 the court finds a child to be abused or neglected, the
4 department shall file with the court a copy of the child's case
5 plan, including the permanency plan for the child. The term
6 "case plan" means a written document that includes, where
7 applicable, the requirements of the family case plan as

8 provided in §49-4-408 of this code and that also includes, at
9 a minimum, the following:

10 (1) A description of the type of home or institution in
11 which the child is to be placed, including a discussion of the
12 appropriateness of the placement and how the agency which
13 is responsible for the child plans to assure that the child
14 receives proper care and that services are provided to the
15 parents, child, and foster parents in order to improve the
16 conditions that made the child unsafe in the care of his or
17 her parent(s), including any reasonable accommodations in
18 accordance with the Americans with Disabilities Act of
19 1990, 42 U. S. C. § 12101 *et seq.*, to parents with disabilities
20 in order to allow them meaningful access to reunification
21 and family preservation services;

22 (2) A plan to facilitate the return of the child to his or
23 her own home or the concurrent permanent placement of the
24 child; and address the needs of the child while in relative or
25 foster care, including a discussion of the appropriateness of
26 the services that have been provided to the child.

27 The term “permanency plan” refers to that part of the
28 case plan which is designed to achieve a permanent home
29 for the child in the least restrictive setting available. The
30 plan must document efforts to ensure that the child is
31 returned home within approximate time lines for
32 reunification as set out in the plan. Reasonable efforts to
33 place a child for adoption or with a legal guardian should be
34 made at the same time, or concurrent with, reasonable
35 efforts to prevent removal or to make it possible for a child
36 to return to the care of his or her parent(s) safely. If
37 reunification is not the permanency plan for the child, the
38 plan must state why reunification is not appropriate and
39 detail the alternative, concurrent permanent placement plans
40 for the child to include approximate time lines for when the
41 placement is expected to become a permanent placement.
42 This case plan shall serve as the family case plan for parents
43 of abused or neglected children. Copies of the child’s case
44 plan shall be sent to the child’s attorney and parent, guardian

45 or custodian or their counsel at least five days prior to the
46 dispositional hearing. The court shall forthwith proceed to
47 disposition giving both the petitioner and respondents an
48 opportunity to be heard.

49 (b) *Disposition decisions.* — The court shall give
50 precedence to dispositions in the following sequence:

51 (1) Dismiss the petition;

52 (2) Refer the child, the abusing parent, the battered
53 parent or other family members to a community agency for
54 needed assistance and dismiss the petition;

55 (3) Return the child to his or her own home under
56 supervision of the department;

57 (4) Order terms of supervision calculated to assist the
58 child and any abusing parent or battered parent or parents or
59 custodian which prescribe the manner of supervision and
60 care of the child and which are within the ability of any
61 parent or parents or custodian to perform;

62 (5) Upon a finding that the abusing parent or battered
63 parent or parents are presently unwilling or unable to
64 provide adequately for the child's needs, commit the child
65 temporarily to the care, custody, and control of the state
66 department, a licensed private child welfare agency, or a
67 suitable person who may be appointed guardian by the
68 court. The court order shall state:

69 (A) That continuation in the home is contrary to the best
70 interests of the child and why;

71 (B) Whether or not the department has made reasonable
72 efforts, with the child's health and safety being the
73 paramount concern, to preserve the family, or some portion
74 thereof, and to prevent or eliminate the need for removing
75 the child from the child's home and to make it possible for
76 the child to safely return home;

77 (C) Whether the department has made reasonable
78 accommodations in accordance with the Americans with
79 Disabilities Act of 1990, 42 U. S. C. § 12101 *et seq.*, to
80 parents with disabilities in order to allow them meaningful
81 access to reunification and family preservation services;

82 (D) What efforts were made or that the emergency
83 situation made those efforts unreasonable or impossible;
84 and

85 (E) The specific circumstances of the situation which
86 made those efforts unreasonable if services were not offered
87 by the department. The court order shall also determine
88 under what circumstances the child's commitment to the
89 department are to continue. Considerations pertinent to the
90 determination include whether the child should:

91 (i) Be considered for legal guardianship;

92 (ii) Be considered for permanent placement with a fit
93 and willing relative; or

94 (iii) Be placed in another planned permanent living
95 arrangement, but only in cases where the child has attained
96 16 years of age and the department has documented to the
97 circuit court a compelling reason for determining that it
98 would not be in the best interests of the child to follow one
99 of the options set forth in subparagraphs (i) or (ii) of this
100 paragraph. The court may order services to meet the special
101 needs of the child. Whenever the court transfers custody of
102 a youth to the department, an appropriate order of financial
103 support by the parents or guardians shall be entered in
104 accordance with §49-4-801 through §49-4-803 of this code;

105 (6) Upon a finding that there is no reasonable likelihood
106 that the conditions of neglect or abuse can be substantially
107 corrected in the near future and, when necessary for the
108 welfare of the child, terminate the parental, custodial and
109 guardianship rights and responsibilities of the abusing
110 parent and commit the child to the permanent sole custody

111 of the nonabusing parent, if there be one, or, if not, to either
112 the permanent guardianship of the department or a licensed
113 child welfare agency. The court may award sole custody of
114 the child to a nonabusing battered parent. If the court shall
115 so find, then in fixing its dispositional order the court shall
116 consider the following factors:

117 (A) The child's need for continuity of care and
118 caretakers;

119 (B) The amount of time required for the child to be
120 integrated into a stable and permanent home environment;
121 and

122 (C) Other factors as the court considers necessary and
123 proper. Notwithstanding any other provision of this article,
124 the court shall give consideration to the wishes of a child 14
125 years of age or older or otherwise of an age of discretion as
126 determined by the court regarding the permanent
127 termination of parental rights. No adoption of a child shall
128 take place until all proceedings for termination of parental
129 rights under this article and appeals thereof are final. In
130 determining whether or not parental rights should be
131 terminated, the court shall consider the efforts made by the
132 department to provide remedial and reunification services to
133 the parent. The court order shall state:

134 (i) That continuation in the home is not in the best
135 interest of the child and why;

136 (ii) Why reunification is not in the best interests of the
137 child;

138 (iii) Whether or not the department made reasonable
139 efforts, with the child's health and safety being the
140 paramount concern, to preserve the family, or some portion
141 thereof, and to prevent the placement or to eliminate the
142 need for removing the child from the child's home and to
143 make it possible for the child to safely return home, or that

144 the emergency situation made those efforts unreasonable or
145 impossible; and

146 (iv) Whether or not the department made reasonable
147 efforts to preserve and reunify the family, or some portion
148 thereof, including a description of what efforts were made
149 or that those efforts were unreasonable due to specific
150 circumstances.

151 (7) For purposes of the court's consideration of the
152 disposition custody of a child pursuant to this subsection,
153 the department is not required to make reasonable efforts to
154 preserve the family if the court determines:

155 (A) The parent has subjected the child, another child of
156 the parent or any other child residing in the same household
157 or under the temporary or permanent custody of the parent
158 to aggravated circumstances which include, but are not
159 limited to, abandonment, torture, chronic abuse, and sexual
160 abuse;

161 (B) The parent has:

162 (i) Committed murder of the child's other parent,
163 guardian or custodian, another child of the parent, or any
164 other child residing in the same household or under the
165 temporary or permanent custody of the parent;

166 (ii) Committed voluntary manslaughter of the child's
167 other parent, guardian or custodian, another child of the
168 parent, or any other child residing in the same household or
169 under the temporary or permanent custody of the parent;

170 (iii) Attempted or conspired to commit murder or
171 voluntary manslaughter, or been an accessory before or after
172 the fact to either crime;

173 (iv) Committed a malicious assault that results in
174 serious bodily injury to the child, the child's other parent,
175 guardian or custodian, to another child of the parent, or any

176 other child residing in the same household or under the
177 temporary or permanent custody of the parent; or

178 (v) Committed sexual assault or sexual abuse of the
179 child, the child's other parent, guardian or custodian,
180 another child of the parent, or any other child residing in the
181 same household or under the temporary or permanent
182 custody of the parent.

183 (C) The parental rights of the parent to another child
184 have been terminated involuntarily;

185 (D) A parent has been required by state or federal law
186 to register with a sex offender registry, and the court has
187 determined in consideration of the nature and circumstances
188 surrounding the prior charges against that parent, that the
189 child's interests would not be promoted by a preservation of
190 the family.

191 (c) As used in this section, "No reasonable likelihood
192 that conditions of neglect or abuse can be substantially
193 corrected" means that, based upon the evidence before the
194 court, the abusing adult or adults have demonstrated an
195 inadequate capacity to solve the problems of abuse or
196 neglect on their own or with help. Those conditions exist in
197 the following circumstances, which are not exclusive:

198 (1) The abusing parent or parents have habitually
199 abused or are addicted to alcohol, controlled substances or
200 drugs, to the extent that proper parenting skills have been
201 seriously impaired and the person or persons have not
202 responded to or followed through the recommended and
203 appropriate treatment which could have improved the
204 capacity for adequate parental functioning;

205 (2) The abusing parent or parents have willfully refused
206 or are presently unwilling to cooperate in the development
207 of a reasonable family case plan designed to lead to the
208 child's return to their care, custody and control;

209 (3) The abusing parent or parents have not responded to
210 or followed through with a reasonable family case plan or
211 other rehabilitative efforts of social, medical, mental health,
212 or other rehabilitative agencies designed to reduce or
213 prevent the abuse or neglect of the child, as evidenced by
214 the continuation or insubstantial diminution of conditions
215 which threatened the health, welfare, or life of the child;

216 (4) The abusing parent or parents have abandoned the
217 child;

218 (5) The abusing parent or parents have repeatedly or
219 seriously injured the child physically or emotionally, or
220 have sexually abused or sexually exploited the child, and the
221 degree of family stress and the potential for further abuse
222 and neglect are so great as to preclude the use of resources
223 to mitigate or resolve family problems, or assist the abusing
224 parent or parents in fulfilling their responsibilities to the
225 child; and

226 (6) The battered parent's parenting skills have been
227 seriously impaired and the person has willfully refused or is
228 presently unwilling or unable to cooperate in the
229 development of a reasonable treatment plan, or has not
230 adequately responded to or followed through with the
231 recommended and appropriate treatment plan.

232 (d) The court may, as an alternative disposition, allow
233 the parents or custodians an improvement period not to
234 exceed six months. During this period the court shall require
235 the parent to rectify the conditions upon which the
236 determination was based. The court may order the child to
237 be placed with the parents, or any person found to be a fit
238 and proper person, for the temporary care of the child during
239 the period. At the end of the period, the court shall hold a
240 hearing to determine whether the conditions have been
241 adequately improved and at the conclusion of the hearing
242 shall make a further dispositional order in accordance with
243 this section.

244 (e) The court may not terminate the parental right of a
245 parent on the sole basis that the parent is participating in a
246 medication-assisted treatment program, as regulated in §16-
247 5Y-1 *et seq.*, for substance use disorder, as long as the parent
248 is successfully fulfilling his or her treatment obligations in
249 the medication-assisted treatment program.

§49-4-608. Permanency hearing; frequency; transitional planning; out-of-state placements; findings; notice; permanent placement review.

1 (a) *Permanency hearing when reasonable efforts are*
2 *not required.* — If the court finds, pursuant to this article,
3 that the department is not required to make reasonable
4 efforts to preserve the family, then, notwithstanding any
5 other provision, a permanency hearing must be held within
6 30 days following the entry of the court order so finding,
7 and a permanent placement review hearing must be
8 conducted at least once every 90 days thereafter until a
9 permanent placement is achieved.

10 (b) *Permanency hearing every 12 months until*
11 *permanency is achieved.* — If, 12 months after receipt by
12 the department or its authorized agent of physical care,
13 custody, and control of a child either by a court-ordered
14 placement or by a voluntary agreement, the department has
15 not placed a child in an adoptive home, placed the child with
16 a natural parent, placed the child in legal guardianship, or
17 permanently placed the child with a fit and willing relative,
18 the court shall hold a permanency hearing. The department
19 shall file a progress report with the court detailing the efforts
20 that have been made to place the child in a permanent home
21 and copies of the child's case plan, including the
22 permanency plan as defined in §49-1-201 and §49-4-604 of
23 this code. Copies of the report shall be sent to the parties and
24 all persons entitled to notice and the right to be heard. The
25 court shall schedule a hearing, giving notice and the right to
26 be present to the child's attorney; the child; the child's
27 parents; the child's guardians; the child's foster parents; any
28 preadoptive parent, or any relative providing care for the

29 child; any person entitled to notice and the right to be heard;
30 and other persons as the court may, in its discretion, direct.
31 The child's presence may be waived by the child's attorney
32 at the request of the child or if the child is younger than 12
33 years and would suffer emotional harm. The purpose of the
34 hearing is to review the child's case, to determine whether
35 and under what conditions the child's commitment to the
36 department shall continue, to determine what efforts are
37 necessary to provide the child with a permanent home, and
38 to determine if the department has made reasonable efforts
39 to finalize the permanency plan. The court shall conduct
40 another permanency hearing within 12 months thereafter for
41 each child who remains in the care, custody, and control of
42 the department until the child is placed in an adoptive home,
43 returned to his or her parents, placed in legal guardianship,
44 or permanently placed with a fit and willing relative.

45 (c) *Transitional planning for older children.* — In the
46 case of a child who has attained 16 years of age, the court
47 shall determine the services needed to assist the child to
48 make the transition from foster care to independent living.
49 The child's case plan should specify services aimed at
50 transitioning the child into adulthood. When a child turns
51 17, or as soon as a child aged 17 comes into a case, the
52 department must immediately provide the child with
53 assistance and support in developing a transition plan that is
54 personalized at the direction of the child. The plan must
55 include specific options on housing, health insurance,
56 education, local opportunities for mentors, continuing
57 support services, work force support, and employment
58 services, and the plan should be as detailed as the child may
59 elect. In addition to these requirements, when a child with
60 special needs turns 17, or as soon as a child aged 17 with
61 special needs comes into a case, he or she is entitled to the
62 appointment of a department adult services worker to the
63 multidisciplinary treatment team, and coordination between
64 the multidisciplinary treatment team and other transition
65 planning teams, such as special education individualized
66 education planning (IEP) teams.

67 (d) *Out-of-state placements.* — A court may not order a
68 child to be placed in an out-of-state facility unless the child
69 is diagnosed with a health issue that no in-state facility or
70 program serves, unless a placement out of state is in closer
71 proximity to the child’s family for the necessary care, or the
72 services are able to be provided more timely. If the child is
73 to be placed with a relative or other responsible person out
74 of state, the court shall use judicial leadership to help
75 expedite the process under the Interstate Compact for the
76 Placement of Children provided in §49-7-101 and §49-7-
77 102 and the Uniform Child Custody Jurisdiction and
78 Enforcement Act provided in §48-20-101 *et seq.* of this
79 code.

80 (e) *Findings in order.* — At the conclusion of the
81 hearing the court shall, in accordance with the best interests
82 of the child, enter an order containing all the appropriate
83 findings. The court order shall state:

84 (1) Whether or not the department made reasonable
85 efforts to preserve the family and to prevent out-of-home
86 placement or that the specific situation made the effort
87 unreasonable;

88 (2) Whether or not the department made reasonable
89 efforts to finalize the permanency plan and concurrent plan
90 for the child;

91 (3) The appropriateness of the child’s current
92 placement, including its distance from the child’s home and
93 whether or not it is the least restrictive one (most family-
94 like one) available;

95 (4) The appropriateness of the current educational
96 setting and the proximity to the school in which the child is
97 enrolled at the time of placement;

98 (5) Services required to meet the child’s needs and
99 achieve permanency; and

100 (6) In addition, in the case of any child for whom
101 another planned permanent living arrangement is the
102 permanency plan, the court shall: (A) Inquire of the child
103 about the desired permanency outcome for the child; (B)
104 make a judicial determination explaining why, as of the date
105 of the hearing, another planned permanent living
106 arrangement is the best permanency plan for the child; and
107 (C) provide in the court order compelling reasons why it
108 continues to not be in the best interest of the child to (i)
109 return home, (ii) be placed for adoption, (iii) be placed with
110 a legal guardian, or (iv) be placed with a fit and willing
111 relative.

112 (f) The department shall annually report to the court the
113 current status of the placements of children in the care,
114 custody and control of the state department who have not
115 been adopted.

116 (g) The department shall file a report with the court in
117 any case where any child in the custody of the state receives
118 more than three placements in one year no later than 30 days
119 after the third placement. This report shall be provided to all
120 parties and persons entitled to notice and the right to be
121 heard. Upon motion by any party, the court shall review
122 these placements and determine what efforts are necessary
123 to provide the child with a permanent home. No report may
124 be provided to any parent or parent's attorney whose
125 parental rights have been terminated pursuant to this article.

126 (h) The department shall give actual notice, in writing,
127 to the court, the child, the child's attorney, the parents and
128 the parents' attorney at least 48 hours prior to the move if
129 this is a planned move, or within 48 hours of the next
130 business day after the move if the child is in imminent
131 danger in the child's current placement, except where the
132 notification would endanger the child or the foster family.
133 A multidisciplinary treatment team shall convene as soon as
134 practicable after notice to explore placement options. This
135 requirement is not waived by placement of the child in a
136 home or other residence maintained by a private provider.

137 No notice may be provided pursuant to this provision to any
138 parent or parent's attorney whose parental rights have been
139 terminated pursuant to this article.

140 (i) Nothing in this article precludes any party from
141 petitioning the court for review of the child's case at any
142 time. The court shall grant the petition upon a showing that
143 there is a change in circumstance or needs of the child that
144 warrants court review.

145 (j) Any foster parent, preadoptive parent or relative
146 providing care for the child shall be given notice of and the
147 right to be heard at the permanency hearing provided in this
148 section.

§49-4-711. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders.

1 At the outset of an adjudicatory hearing, the court shall
2 inquire of the juvenile whether he or she wishes to admit or
3 deny the allegations in the petition. The juvenile may elect
4 to stand silent, in which event the court shall enter a general
5 denial of all allegations in the petition.

6 (1) If the respondent juvenile admits the allegations of
7 the petition, the court shall consider the admission to be
8 proof of the allegations if the court finds: (A) The
9 respondent fully understands all of his or her rights under
10 this article; (B) the respondent voluntarily, intelligently and
11 knowingly admits all facts requisite for an adjudication; and
12 (C) the respondent in his or her admission has not set forth
13 facts which constitute a defense to the allegations.

14 (2) If the respondent juvenile denies the allegations, the
15 court shall dispose of all pretrial motions and the court or
16 jury shall proceed to hear evidence.

17 (3) If the allegations in a petition alleging that the
18 juvenile is delinquent are admitted or are sustained by proof
19 beyond a reasonable doubt, the court shall schedule the

20 matter for disposition pursuant to §49-4-704 of this code.
21 The court shall receive and consider the results of the needs
22 assessment, as defined in §49-1-206 of this code, prior to or
23 at the disposition.

24 (4) If the allegations in a petition alleging that the
25 juvenile is a status offender are admitted or sustained by
26 clear and convincing evidence, the court shall consider the
27 results of the needs assessment, as defined in §49-1-206 of
28 this code, prior to or at the disposition and refer the juvenile
29 to the Department of Health and Human Resources for
30 services, pursuant to §49-4-712 of this code, and order the
31 department to report back to the court with regard to the
32 juvenile's progress at least every 90 days or until the court,
33 upon motion or sua sponte, orders further disposition under
34 §49-4-712 of this code or dismisses the case from its docket:
35 *Provided*, That in a judicial circuit operating a truancy
36 program, a circuit judge may, in lieu of referring truant
37 juveniles to the department, order that the juveniles be
38 supervised by his or her probation office: *Provided*,
39 *however*, That a circuit judge may also refer a truant
40 juvenile to a truancy diversion specialist.

41 (5) If the allegations in a petition are not sustained by
42 evidence as provided in §49-4-711(c) and §49-4-711(d) of
43 this code, the petition shall be dismissed and the juvenile
44 shall be discharged if he or she is in custody.

45 (6) Findings of fact and conclusions of law addressed to
46 all allegations in the petition shall be stated on the record or
47 reduced to writing and filed with the record or incorporated
48 into the order of the court. The record shall include the
49 treatment and rehabilitation plan the court has adopted after
50 recommendation by the multidisciplinary team as provided
51 for in §49-4-406 of this code.

§49-4-714. Disposition of juvenile delinquents; appeal.

1 (a) In aid of disposition of juvenile delinquents, the
2 juvenile probation officer assigned to the juvenile shall,

3 upon request of the court, make an investigation of the
4 environment of the juvenile and the alternative dispositions
5 possible. The court, upon its own motion, or upon request
6 of counsel, may order the use of a standardized screener, as
7 defined in §49-1-206 of this code or, if additional
8 information is necessary, a psychological examination of
9 the juvenile. The report of an examination and other
10 investigative and social reports shall not be relied upon the
11 court in making a determination of adjudication. Unless
12 waived, copies of the report shall be provided to counsel for
13 the petitioner and counsel for the juvenile no later than 72
14 hours prior to the dispositional hearing.

15 (b) Following the adjudication, the court shall receive
16 and consider the results of a needs assessment, as defined in
17 §49-1-206 of this code, and shall conduct the disposition,
18 giving all parties an opportunity to be heard. The disposition
19 may include reasonable and relevant orders to the parents,
20 custodians or guardians of the juvenile as is necessary and
21 proper to effectuate the disposition. At disposition the court
22 shall not be limited to the relief sought in the petition and
23 shall, in electing from the following alternatives, consider
24 the best interests of the juvenile and the welfare of the
25 public:

26 (1) Dismiss the petition;

27 (2) Refer the juvenile and the juvenile's parent or
28 custodian to a community agency for needed assistance and
29 dismiss the petition;

30 (3) Upon a finding that the juvenile is in need of extra-
31 parental supervision: (A) Place the juvenile under the
32 supervision of a probation officer of the court or of the court
33 of the county where the juvenile has his or her usual place
34 of abode or other person while leaving the juvenile in
35 custody of his or her parent or custodian; and (B) prescribe
36 a program of treatment or therapy or limit the juvenile's
37 activities under terms which are reasonable and within the
38 child's ability to perform, including participation in the litter

39 control program established pursuant to §22-15A-3 of this
40 code or other appropriate programs of community service;

41 (4) Upon a finding that a parent or custodian is not
42 willing or able to take custody of the juvenile, that a juvenile
43 is not willing to reside in the custody of his or her parent or
44 custodian or that a parent or custodian cannot provide the
45 necessary supervision and care of the juvenile, the court
46 may place the juvenile in temporary foster care or
47 temporarily commit the juvenile to the department or a child
48 welfare agency. The court order shall state that continuation
49 in the home is contrary to the best interest of the juvenile
50 and why; and whether or not the department made a
51 reasonable effort to prevent the placement or that the
52 emergency situation made those efforts unreasonable or
53 impossible. Whenever the court transfers custody of a youth
54 to the department, an appropriate order of financial support
55 by the parents or guardians shall be entered in accordance
56 with §49-4-801 through §49-4-803 *et seq.* of this code and
57 guidelines promulgated by the Supreme Court of Appeals;

58 (5) (A) Upon a finding that the best interests of the
59 juvenile or the welfare of the public require it, and upon an
60 adjudication of delinquency, the court may commit the
61 juvenile to the custody of the Director of the Division of
62 Corrections and Rehabilitation for placement in a juvenile
63 services facility for the treatment, instruction and
64 rehabilitation of juveniles. The court maintains discretion to
65 consider alternative sentencing arrangements.

66 (B) Notwithstanding any provision of this code to the
67 contrary, in the event that the court determines that it is in
68 the juvenile's best interests or required by the public welfare
69 to place the juvenile in the custody of the Division of
70 Corrections and Rehabilitation, the court shall provide the
71 Division of Corrections and Rehabilitation with access to all
72 relevant court orders and records involving the underlying
73 offense or offenses for which the juvenile was adjudicated
74 delinquent, including sentencing and presentencing reports
75 and evaluations, and provide the division with access to

76 school records, psychological reports and evaluations,
77 needs assessment results, medical reports and evaluations or
78 any other such records as may be in the court's possession
79 as would enable the Division of Corrections and
80 Rehabilitation to better assess and determine the appropriate
81 counseling, education and placement needs for the juvenile
82 offender.

83 (C) Commitments may not exceed the maximum term
84 for which an adult could have been sentenced for the same
85 offense and any such maximum allowable term of
86 confinement to be served in a juvenile correctional facility
87 shall take into account any time served by the juvenile in a
88 detention center pending adjudication, disposition or
89 transfer. The order shall state that continuation in the home
90 is contrary to the best interests of the juvenile and why; and
91 whether or not the state department made a reasonable effort
92 to prevent the placement or that the emergency situation
93 made those efforts unreasonable or impossible; or

94 (6) After a hearing conducted under the procedures set
95 out in §27-5-4(c) and §27-5-4(d) of this code, commit the
96 juvenile to a mental health facility in accordance with the
97 juvenile's treatment plan; the director of the mental health
98 facility may release a juvenile and return him or her to the
99 court for further disposition. The order shall state that
100 continuation in the home is contrary to the best interests of
101 the juvenile and why; and whether or not the state
102 department made a reasonable effort to prevent the
103 placement or that the emergency situation made those
104 efforts unreasonable or impossible.

105 The court shall make all reasonable efforts to place the
106 juvenile in the least restrictive alternative appropriate to the
107 needs of the juvenile and the community: *Provided*, That a
108 juvenile adjudicated delinquent for a nonviolent
109 misdemeanor offense may not be placed in an out-of-home
110 placement within the Division of Corrections and
111 Rehabilitation or the department if that juvenile has no prior
112 adjudications as either a status offender or as a delinquent,

113 or no prior dispositions to a pre-adjudicatory improvement
114 period or probation for the current matter, excluding
115 placements made for abuse or neglect: *Provided, however,*
116 That if the court finds by clear and convincing evidence that
117 there is a significant and likely risk of harm, as determined
118 by a needs assessment, to the juvenile, a family member or
119 the public and that continued placement in the home is
120 contrary to the best interest of the juvenile, such juvenile
121 may be ordered to an out-of-home placement: *Provided*
122 *further,* That the department has made all reasonable efforts
123 to prevent removal of the juvenile from his or her home, or
124 that reasonable efforts are not required due to an emergent
125 situation.

126 (c) In any case in which the court decides to order the
127 juvenile placed in an out-of-state facility or program, it shall
128 set forth in the order directing the placement the reasons the
129 juvenile was not placed in an in-state facility or program.

130 (d) The disposition of the juvenile shall not be affected
131 by the fact that the juvenile demanded a trial by jury or made
132 a plea of not guilty. Any disposition is subject to appeal to
133 the Supreme Court of Appeals.

134 (e) Following disposition, the court shall inquire
135 whether the juvenile wishes to appeal and the response shall
136 be transcribed; a negative response shall not be construed as
137 a waiver. The evidence shall be transcribed as soon as
138 practicable and made available to the juvenile or his or her
139 counsel, if the same is requested for purposes of further
140 proceedings. A judge may grant a stay of execution pending
141 further proceedings.

142 (f) Following a disposition under §49-4-714(b)(4), §49-
143 4-714(b)(5), or §49-4-714(b)(6) of this code, the court shall
144 include in the findings of fact the treatment and
145 rehabilitation plan the court has adopted upon
146 recommendation of the multidisciplinary team under §49-4-
147 406 of this code.

148 (g) Notwithstanding any other provision of this code to
149 the contrary, if a juvenile charged with delinquency under
150 this chapter is transferred to adult jurisdiction and there tried
151 and convicted, the court may make its disposition in
152 accordance with this section in lieu of sentencing the person
153 as an adult.

§49-4-724. Standardized assessments.

1 (a) The Supreme Court of Appeals is requested to adopt
2 a risk and needs assessment to be used for adjudicated
3 delinquents, detained and delivered to, or committed to the
4 custody of the Commissioner of Corrections and
5 Rehabilitation. A validation study of the risk and needs
6 assessment may be conducted at least every three years to
7 ensure that the risk and needs assessment is predictive of the
8 risk of reoffending.

9 (b) Each juvenile adjudicated for a delinquency offense
10 and committed or detained with the Division of Corrections
11 and Rehabilitation in accordance with §49-4-714(b)(5)(A)
12 of this code shall undergo a risk and needs assessment prior
13 to disposition to identify specific factors that predict a
14 juvenile's likelihood of reoffending and, when
15 appropriately addressed, may reduce the likelihood of
16 reoffending. The risk and needs assessment may be
17 conducted by a division worker trained to conduct the risk
18 and needs assessment.

19 (c) Each multidisciplinary team convened pursuant to
20 §49-4-406(c) of this code shall receive and consider the
21 results of the risk and needs assessment of the juvenile.

22 (d) The results of the risk and needs assessment shall be
23 provided to the court prior to disposition or at the time of
24 the dispositional hearing.

●

CHAPTER 45

**(S. B. 550 - By Senators Blair, Boley, Facemire,
Hamilton, Ihlenfeld, Maroney, Palumbo, Plymale,
Prezioso, Roberts, Swope, Sypolt, Tarr, Stollings,
Jeffries, Hardesty, Romano and Cline)**

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

AN ACT recognizing and declaring certain claims against agencies of the state to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

§1. Finding and declaring certain claims against the Department of Health and Human Resources and the West Virginia Racing Commission to be moral obligations of the state and directing payments thereof.

1 The Legislature has heretofore made findings of fact
2 that the state has received the benefit of the commodities
3 received and/or services rendered by certain claimants
4 herein and has considered these claims against the state, and
5 agency thereof, which have arisen due to over-expenditures
6 of the departmental appropriations by officers of the state
7 spending units, the claims having been previously
8 considered by the Legislative Claims Commission which
9 also found that the state has received the benefit of the
10 commodities received and/or services rendered by the
11 claimants, but were denied by the Legislative Claims
12 Commission on the purely statutory grounds that to allow
13 the claims would be condoning illegal acts contrary to the
14 laws of the state. The Legislature, pursuant to its findings

15 of fact and also by the adoption of the findings of fact by the
 16 Legislative Claims Commission as its own, while not
 17 condoning such illegal acts, hereby declares it to be the
 18 moral obligation of the state to pay these claims in the
 19 amounts specified below and directs the Auditor to issue
 20 warrants upon receipt of properly executed requisitions
 21 supported by itemized invoices, statements, or other
 22 satisfactory documents as required by §12-3-10 of the Code
 23 of West Virginia, 1931, as amended, for the payments
 24 thereof out of any fund appropriated and available for the
 25 purpose.

26 *(a) Claims against the Department of Health and*
 27 *Human Resources:*

28 (TO BE PAID FROM GENERAL REVENUE FUND)

29	(1) Affordable Cremations of WV	\$15,000.00
30	(2) Altmeyer Funeral Home.	\$5,000.00
31	(3) Carpenter and Ford Funeral Home	\$3,750.00
32	(4) Casto Funeral Home	\$2,500.00
33	(5) Domico Funeral Home.....	\$434.00
34	(6) Ford Funeral Home	\$2,500.00
35	(7) Helsley-Johnson Funeral Home.....	\$1,250.00
36	(8) Johnson Tiller Funeral Home	\$3,750.00
37	(9) Kepner Funeral Home.....	\$1,250.00
38	(10) Kimes Funeral Home	\$1,250.00
39	(11) Klingel-Carpenter Mortuary	\$1,250.00
40	(12) Leavitt Funeral Home	\$1,250.00
41	(13) McCullough Funeral Home	\$3,750.00

42 (14) McCullough Raiguel Funeral Home.....\$3,750.00

43 (15) Melton Mortuary, Inc..... \$13,750.00

44 (16) Mid-Ohio Valley Cremation Society\$8,750.00

45 (17) Morgan Funeral Home.....\$2,500.00

46 (18) Smith Funeral & Cremation Care\$1,250.00

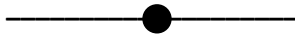
47 (19) Tankersley Funeral Home.....\$1,250.00

48 (20) White Funeral Home.....\$1,250.00

49 (b) *Claim against the Racing Commission:*

50 (TO BE PAID FROM GENERAL REVENUE FUND)

51 (1) Williams Racing Corporation\$2,435.88



CHAPTER 46

(Com. Sub. for H. B. 2831 - By Delegates Criss, Barrett, Boggs, Butler, Cowles, Hardy, Hartman, Hill, Longstreth, Pethel and Storch)

 [Passed March 8, 2019; in effect from passage.]
 [Approved by the Governor on March 26, 2019.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

§1. Finding and declaring certain claims against the Department of Administration; Department of Administration, Office of Technology; Enterprise Resource Planning Board;

Department of Environmental Protection; Department of Health and Human Resources; Department of Health and Human Resources, Bureau for Behavioral Health and Health Facilities; Department of Health and Human Resources, Bureau for Public Health; Department of Health and Human Resources, Office of Chief Medical Examiner; Department of Health and Human Resources, Office of Laboratory Services; Department of Military Affairs & Public Safety, Division of Corrections and Rehabilitation; Department of Military Affairs & Public Safety, Division of Corrections and Rehabilitation, Regional Jail Authority; Department of Military Affairs & Public Safety, Regional Jail and Correctional Facility Authority; Secretary of State; Department of Transportation, Division of Highways; Department of Transportation, Division of Motor Vehicles; and Department of Veterans Assistance to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and
 2 recommendations reported to it by the Legislative Claims
 3 Commission concerning various claims against the state and
 4 agencies thereof and in respect to each of the following
 5 claims, the Legislature adopts those findings of fact as its
 6 own and in respect of the claims herein, the Legislature has
 7 independently made findings of fact and determinations of
 8 award and hereby declares it to be the moral obligation of
 9 the state to pay each such claim in the amount specified
 10 below and directs the Auditor to issue warrants for the
 11 payment thereof out of any fund appropriated and available
 12 for the purpose.

13 (a) *Claim against the Department of Administration:*

14 (TO BE PAID FROM SPECIAL REVENUE FUND)

15 WV Association of

16 Rehabilitation Facilities, Inc.....\$2,172.78

17 (b) *Claims against the Department of Administration,*
 18 *Office of Technology:*

19	(TO BE PAID FROM SPECIAL REVENUE FUND)	
20	(1) Ricoh USA.....	\$23,640.96
21	(2) Ricoh USA.....	\$92,727.00
22	(3) Verizon Business	\$28,160.00
23	(4) Verizon Business	\$56,780.00
24	<i>(c) Claim against the Enterprise Resource Planning</i>	
25	<i>Board:</i>	
26	(TO BE PAID FROM SPECIAL REVENUE FUND)	
27	WV Association of	
28	Rehabilitation Facilities, Inc.....	\$2,492.25
29	<i>(d) Claim against the Department of Environmental</i>	
30	<i>Protection:</i>	
31	(TO BE PAID FROM SPECIAL REVENUE FUND)	
32	Potesta & Associates Inc.	\$29,500.00
33	<i>(e) Claim against the Department of Health and Human</i>	
34	<i>Resources:</i>	
35	(TO BE PAID FROM GENERAL REVENUE FUND)	
36	National Medical Services, Inc.....	\$103,440.66
37	<i>(f) Claim against the Department of Health and Human</i>	
38	<i>Resources, Bureau for Behavioral Health and Health</i>	
39	<i>Facilities:</i>	
40	(TO BE PAID FROM GENERAL REVENUE FUND)	
41	First Databank Inc.	\$23,235.00
42	<i>(g) Claims against the Department of Health and</i>	
43	<i>Human Resources, Bureau for Public Health:</i>	

44 (TO BE PAID FROM GENERAL REVENUE FUND)

45 (1) GlaxoSmithKline Pharmaceuticals\$43,290.00

46 (2) Sanofi Pasteur Inc.\$158,386.32

47 (3) Social Solutions Global, Inc.\$27,445.50

48 *(h) Claims against the Department of Health and*
49 *Human Resources, Office of Chief Medical Examiner:*

50 (TO BE PAID FROM GENERAL REVENUE FUND)

51 Microgenics Corporation.....\$6,167.00

52 *(i) Claims against the Department of Health and Human*
53 *Resources, Office of Laboratory Services:*

54 (TO BE PAID FROM GENERAL REVENUE FUND)

55 Pitney Bowes Inc.....\$11,969.46

56 *(j) Claims against the Department of Military Affairs and*
57 *Public Safety, Division of Corrections and Rehabilitation:*

58 (TO BE PAID FROM GENERAL REVENUE FUND)

59 (1) Wendell K. Ash..... \$200.00

60 (2) Wendell K. Ash..... \$52.95

61 (3) Wendell K. Ash..... \$33.49

62 (4) Gary Baker \$25.00

63 (5) Gary R. Baker..... \$1,674.00

64 (6) Foster Bowen \$856.32

65 (7) Anthony William Cartagena..... \$884.75

66 (8) Thomas G. Carter Jr. \$120.00

67 (9) Bannar C. Catlett..... \$793.00

68	(10)	Jonathan Charles Cochran.....	\$240.00
69	(11)	Ronald L. Cosner	\$25.00
70	(12)	Crosier's Sanitary Service Inc.....	\$19,044.50
71	(13)	Keith Dement	\$158.35
72	(14)	David Lawrence Dixon	\$300.00
73	(15)	Earthtec Environmental Services LLC ...	\$7,500.00
74	(16)	Deshaun Evans	\$491.27
75	(17)	Kevin S. Ford	\$106.38
76	(18)	Jason Douglas Freeman.....	\$319.77
77	(19)	Terrance Hamrick.....	\$220.60
78	(20)	Ferlin Heavener.....	\$86.79
79	(21)	Douglas C. Jackson Jr.	\$554.10
80	(22)	William Macri	\$3,200.00
81	(23)	Brian Markley	\$50.00
82	(24)	Mark McAtee	\$70.60
83	(25)	Marlin McClain.....	\$42.50
84	(26)	Marlin McClain.....	\$730.00
85	(27)	Brent Levi Victor McGilton.....	\$90.30
86	(28)	Justin McKenzie.....	\$99.17
87	(29)	Letcher McKinney II.....	\$527.12
88	(30)	Rodger D. Mitchell.....	\$14.00
89	(31)	Garland Murray.....	\$275.00

90	(32)	Jason Perry	\$570.00
91	(33)	Matthew Reed	\$30.00
92	(34)	Matthew D. Reed	\$44.04
93	(35)	Martin Riley Robinson.....	\$659.64
94	(36)	Christopher Roof.....	\$41.50
95	(37)	Christopher Roof.....	\$187.50
96	(38)	Brian John Stone	\$1,179.47
97	(39)	Charles Taylor.....	\$40.00
98	(40)	Jeffrey Taylor	\$130.00
99	(41)	Arthur Thornton	\$30.44
100	(42)	Raymond S. Wallace	\$223.21
101	(43)	Phillip A. Ward	\$511.27
102	(44)	Joshua Webster.....	\$222.60
103	(45)	Joshua Webster.....	\$415.00
104	(46)	Wilson Restoration, Inc.	\$29,000.00
105	(47)	John Wilson.....	\$130.00
106	(48)	Roy Lee Wisotzkey	\$832.81
107	(49)	Brian K. Woodson.....	\$150.00
108	(50)	Larry Wooten	\$60.47
109	(51)	Edwin Lee Wright	\$763.00
110	(52)	William B. Wriston	\$54.74
111	(53)	Henry Keith Wykle	\$252.90

112 *(k) Claims against the Department of Military Affairs*
 113 *and Public Safety, Division of Corrections and*
 114 *Rehabilitation, Regional Jail Authority:*

115 (TO BE PAID FROM SPECIAL REVENUE FUND)

116 (1) Jason Ray Blankenship.....\$441.98

117 (2) Justin T. Mitchell\$784.00

118 *(l) Claims against the Department of Military Affairs*
 119 *and Public Safety, Regional Jail and Correctional Facility*
 120 *Authority:*

121 (TO BE PAID FROM SPECIAL REVENUE FUND)

122 (1) Zachary Taylor Blake \$88.74

123 (2) James R. Davis..... \$679.94

124 (3) Claïresse Felipe..... \$1,097.92

125 (4) Meronica Harrison \$600.00

126 (5) Jeffrey Allen Hazlett..... \$96.28

127 (6) Hunter C. Morela \$267.00

128 (7) Russell William Oliver \$600.00

129 (8) Troy Peace \$1,319.00

130 (9) Mark T. Radcliffe
 131 and Angela L. Radcliffe \$35.32

132 (10) Sharnjeet Singh \$7.00

133 (11) Basim A. Talouzi \$150.00

134 (12) Joshua Thornhill..... \$131.87

135 (13) Dionne Townsend..... \$119.60

136 (14) Cynthia Van Dyne and Justin Stefanko.... \$31.79

137	(15)	Mark W. Van Meter.....	\$300.00
138	(16)	Wendy Watson and Joseph M. Watson....	\$19.27
139		<i>(m) Claim against the Secretary of State:</i>	
140		(TO BE PAID FROM GENERAL REVENUE –	
141		REAPPROPRIATED FUNDS)	
142		West Virginia Interactive, LLC.....	\$106,378.00
143		<i>(n) Claims against Department of Transportation,</i>	
144		<i>Division of Highways:</i>	
145		(TO BE PAID FROM STATE ROAD FUND)	
146	(1)	Emma Abbott	\$500.00
147	(2)	Mohamed Aboelmagd.....	\$800.00
148	(3)	Christopher Abraham	\$212.35
149	(4)	Benjamin C. Adams	\$2,000.00
150	(5)	Clifton L. Adams.....	\$500.00
151	(6)	Karen S. Adams	\$399.06
152	(7)	Karen S. Adams	\$183.87
153	(8)	Roma J. Adams	\$1,453.40
154	(9)	Matthew Adkins and Annie Adkins.....	\$899.25
155	(10)	Shane Adkins and	
156		Sarah Elizabeth Adkins	\$186.18
157	(11)	John R. Akers.....	\$231.64
158	(12)	Paul F. Alderman and	
159		Betty A. Alderman	\$331.52
160	(13)	Artvetta Alexander and	
161		Marcus K. Patterson	\$79.22

162	(14)	Joseph Altizer.....	\$500.00
163	(15)	Michael Alvarez.....	\$109.50
164	(16)	Deborah A. Aman-Paugh.....	\$151.50
165	(17)	Timothy A. Amick.....	\$119.99
166	(18)	Howard D. Anderson and	
167		Marquita J. Anderson.....	\$323.90
168	(19)	Kathy J. Anderson.....	\$348.47
169	(20)	Thomas Andreas.....	\$250.00
170	(21)	Ivan Antill Jr.	\$250.00
171	(22)	David W. Apts.....	\$1,000.00
172	(23)	Jason L. Arthur and Brandy Arthur.....	\$309.52
173	(24)	Joel Kevin Arthur and Sonya A. Arthur	\$294.43
174	(25)	Charles Arthurs.....	\$250.00
175	(26)	Brian Scott Asbury.....	\$79.72
176	(27)	Richard Asherman.....	\$17,152.00
177	(28)	Tracey Assi.....	\$500.00
178	(29)	Donald E. Austin.....	\$250.00
179	(30)	Jasmine Austin.....	\$4,567.39
180	(31)	Toni Bailey.....	\$500.00
181	(32)	Montana L. Bailey and	
182		Jeffery T. Bailey II.....	\$500.00
183	(33)	Sonia Bailey-Gibson and	
184		William B. Gibson Jr.	\$210.20
185	(34)	Jennifer R. Baldwin and	
186		Brian D. Baldwin.....	\$225.07

187	(35)	John D. Ballard and	
188		Tammy R. Ballard	\$1,000.00
189	(36)	Greg Bamberger	\$132.50
190	(37)	John Barkley and Mary C. Barkley	\$497.35
191	(38)	Samantha Barlow, Brittany M. Squires	
192		and William D. Squires	\$500.00
193	(39)	Nathan Barnes and Jessica Barnes	\$276.24
194	(40)	Keirsten Barnett	\$500.00
195	(41)	Mary Lou Barnett and	
196		Timothy J. Barnett.....	\$278.20
197	(42)	Kelly A. Barrett and Michael J. Barrett.....	\$1,000.00
198	(43)	Mishae Bartoe	\$358.45
199	(44)	Nadine Bateman	\$500.00
200	(45)	Michelle Beatty and Donna Beatty	\$125.02
201	(46)	Bonnie Beaver and Robert Beaver	\$352.18
202	(47)	Edward Beech and Barbara Beech.....	\$500.00
203	(48)	Ramona Beer.....	\$286.11
204	(49)	Thomas Beets	\$79.97
205	(50)	Loretta Belanger and Larry Belanger.....	\$500.00
206	(51)	Sabrina Belcher, Rena Lawless	
207		and Randall Lawless	\$3,977.17
208	(52)	Tammy Belcher.....	\$500.00
209	(53)	Joy Bell.....	\$500.00
210	(54)	Steve's Auto Sales and Steven Bellman	\$815.73

211	(55)	Robert E. Bennett and Loue Bennett.....	\$201.53
212	(56)	Jeremy Benson	\$782.18
213	(57)	Sarah Bentley and Michael Bentley	\$350.73
214	(58)	Virgil Birkhimer.....	\$138.50
215	(59)	Larry J. Bise	\$275.60
216	(60)	Tammy L. Black.....	\$419.57
217	(61)	Patsy Blackburn and Mark D. Blackburn.....	\$500.00
218	(62)	Andrea Blackshire	\$500.00
219	(63)	Elizabeth Blackwell and	
220		Brett Blackwell.....	\$688.45
221	(64)	Richard Blake.....	\$473.87
222	(65)	Ashley Bennett Blankenship	
223		and Colonel R. Blankenship.....	\$600.00
224	(66)	Sue A. Blankenship and	
225		Clayton L. Blankenship.....	\$628.58
226	(67)	Terry L. Bledsoe.....	\$463.22
227	(68)	Marra O. Bodkin	\$250.00
228	(69)	Barry C. Boggs and Deborah L. Boggs	\$1,000.00
229	(70)	Robert Lee Bolton III.....	\$53.50
230	(71)	Jerry L. Bolyard and Susan J. Bolyard....	\$250.00
231	(72)	Larry R. Bonasso.....	\$370.87
232	(73)	Jeffery Bonaventura	\$339.20
233	(74)	Brenda Dianne Bonnett and	
234		Don Bonnett	\$500.00

235	(75)	Clement A. Bossie.....	\$415.52
236	(76)	David E. Bowles.....	\$208.27
237	(77)	Ralph T. Bowles and Lisa E. Bowles.....	\$713.31
238	(78)	Haley N. Bowman.....	\$466.42
239	(79)	Franklin Boyce and Kristen Boyce	\$500.00
240	(80)	Mark D. Boyce.....	\$1,000.00
241	(81)	Deborah L. Boyd.....	\$233.20
242	(82)	Sheila J. Braddock.....	\$100.00
243	(83)	Gerald Brady Jr.	\$750.00
244	(84)	Vernon J. Braham and Shirley Braham	\$250.00
245	(85)	Jeannine L. Branch and Dallas Branch ...	\$500.00
246	(86)	Ralph Brandon and Tammy Brandon.....	\$250.00
247	(87)	Ralph Brandon and Tammy Brandon.....	\$250.00
248	(88)	William Brewer and April Brewer	\$500.00
249	(89)	Sumner D. Brody	\$206.70
250	(90)	Homer C. Brooks and Cynthia Brooks....	\$250.00
251	(91)	Aaron L. Brown	\$500.00
252	(92)	Brandi Lynn Brown.....	\$459.54
253	(93)	Chad Brown and Clara Brown	\$250.00
254	(94)	Dale A. Brown and Regina L. Brown	\$500.00
255	(95)	Danielle R. Brown.....	\$430.09
256	(96)	James Brown	\$500.00

257	(97)	Joshua O'Neal Brown and	
258		Amber Brown.....	\$281.64
259	(98)	Kellie Brown	\$1,000.00
260	(99)	Nicholas Brown.....	\$654.74
261	(100)	Peggy L. Brown	\$279.23
262	(101)	Shannon Brown.....	\$500.00
263	(102)	Jerry Brown and	
264		Kathy Brown, his wife	\$30,000.00
265	(103)	Jacqueline Ann Browning.....	\$500.00
266	(104)	John Nicholas Browning	\$500.00
267	(105)	Rhonda L. Bruffy	\$206.70
268	(106)	Diana Brunson and Shayne Brunson.....	\$219.34
269	(107)	Carla Buford.....	\$370.92
270	(108)	Chuck Bumpus	\$209.88
271	(109)	James Bunner	\$250.00
272	(110)	Lew R. Burdette and Joyce L. Burdette	\$500.00
273	(111)	Kayla Burnem	\$347.31
274	(112)	Amanda R. Butcher and David Butcher....	\$95.23
275	(113)	Vickie Cadle.....	\$264.96
276	(114)	Brad Callahan and Brittani Callahan.....	\$267.09
277	(115)	Robert D. Calvert Jr. and	
278		Darla J. Calvert.....	\$500.00
279	(116)	Gary Campbell Jr. and Trista Campbell	\$291.50
280	(117)	Phillip J. Campbell and	
281		Kristyn Campbell	\$222.18

550		CLAIMS AGAINST THE STATE	[Ch. 46
282	(118)	Dominic Campeti, Janet Campeti	
283		and Joseph Campeti.....	\$133.03
284	(119)	Ryan C. Campione	\$93.28
285	(120)	Sean T. Canterbury and	
286		Lea A. Canterbury	\$284.95
287	(121)	Michael P. Cappel and H. Roy Cappel....	\$125.23
288	(122)	Gregory A. Carpenter.....	\$193.64
289	(123)	Carolyn Carrico and Suzanne Carrico.....	\$606.00
290	(124)	Adelle J. Carson	\$449.77
291	(125)	Christopher Castillo	\$500.00
292	(126)	Michael J. Cestaric	\$250.00
293	(127)	Mark Chambers.....	\$515.73
294	(128)	Charles Chambliss.....	\$68.90
295	(129)	Daniel Chandler Jr. and Alex Chandler	\$500.00
296	(130)	Melissa Chandler.....	\$250.00
297	(131)	Tiffany B. Chandler.....	\$800.99
298	(132)	Janice E. Channel	\$75.60
299	(133)	Carolyn Channell	\$300.00
300	(134)	Judy A. Chappell and Steven Chappell	\$487.55
301	(135)	Michael A. Chauvet.....	\$320.14
302	(136)	Justin Cherry	\$500.00
303	(137)	Jonathan Childers	\$500.00
304	(138)	Scott Childers	\$500.00

305	(139)	Christian Life Center.....	\$5,525.00
306	(140)	Mary Clark and Tonya Clark	\$255.41
307	(141)	Homer Lee Clark Jr.....	\$1,000.00
308	(142)	Susan Clary and Luther Clary	\$150.00
309	(143)	Timothy L. Clemens.....	\$250.00
310	(144)	Arch Cline	\$265.50
311	(145)	Roger Cochran Sr.....	\$50.00
312	(146)	Christian Lee Coe and Dennis Coe	\$381.51
313	(147)	Dennis L. Coe and Renee Coe	\$500.00
314	(148)	Melissa Coffman	\$252.28
315	(149)	Jeffrey W. Cole	\$500.00
316	(150)	Richard K. Cole and Mary J. Cole	\$500.00
317	(151)	Kimberly Colebank	\$500.00
318	(152)	Whitney Colvin.....	\$250.00
319	(153)	Dusty Conrad and Laraya Jean Conrad...	\$250.00
320	(154)	Janet S. Conrad and Danny Conrad	\$330.00
321	(155)	Jennifer L. Conrad and Charles Conrad.....	\$117.15
322	(156)	Logan T. Conrad	\$230.00
323	(157)	James D. Cook and Beth Cook.....	\$500.00
324	(158)	Timmy E. Cook and Suzette Cook.....	\$786.78
325	(159)	Kari Cooper.....	\$500.00
326	(160)	Shayne M. Cooper.....	\$12,500.00

327	(161)	Danny Lee Cornell	\$1,000.00
328	(162)	Frank Corona.....	\$218.30
329	(163)	Michael R. Costello.....	\$389.91
330	(164)	James Matthew Coulter.....	\$250.00
331	(165)	Earnest Covington III.....	\$363.90
332	(166)	Donna K. Cramer	\$500.00
333	(167)	Linda Crane.....	\$352.76
334	(168)	Harry E. Craven	\$107.16
335	(169)	Darby K. Crews.....	\$151.00
336	(170)	David L. Cross and Brenda Sue Cross	\$215.71
337	(171)	Tonya L. Cross	\$454.26
338	(172)	Chantelle Cumpston	\$481.79
339	(173)	Timothy Cunningham	\$100.00
340	(174)	Donald Joseph Currier.....	\$1,295,332.00
341	(175)	Orville Cutright and	
342		Georgia O. Cutright.....	\$200.00
343	(176)	Jeannie Dailey	\$500.00
344	(177)	Aaron W. Dalton	\$491.66
345	(178)	James S. Dalton.....	\$277.58
346	(179)	Tiffany Dalton.....	\$500.00
347	(180)	Donald A. Dare	\$500.00
348	(181)	Anthony Davis and Sherry Davis.....	\$500.00
349	(182)	Linda Davis	\$500.00

350	(183)	Lindsey Dawson, Dennis Dawson II	
351		and Karilynne S. Pryor.....	\$95.23
352	(184)	Jacalyn S. Day and Michael D. Day.....	\$132.50
353	(185)	William R. Dean and Cynthia Y. Dean	\$500.00
354	(186)	Cheryl L. Deaner	\$500.00
355	(187)	David DeFrance	\$448.21
356	(188)	Kevin M. Delaplain and Julie Delaplain....	\$500.00
357	(189)	Shirley L. Dempsey.....	\$508.27
358	(190)	Shirley L. Dempsey.....	\$298.73
359	(191)	Dennison Equipment Company LLC	\$1,000.00
360	(192)	Kimberly M. Dent	\$160.59
361	(193)	Steven Walter Despot.....	\$500.00
362	(194)	Jeff DeVincent	\$447.74
363	(195)	Diana L. DeWeese and	
364		Roger L. DeWeese	\$250.00
365	(196)	James Ray Dickens	\$228.96
366	(197)	Kathy Dicola	\$500.00
367	(198)	Sharon K. Dillon	\$148.67
368	(199)	Sharon K. Dillon and Francis L. Dillon....	\$148.67
369	(200)	Peter Dinardi	\$500.00
370	(201)	Chelsey Dingess	\$1,000.00
371	(202)	Lois Jean Dingess and	
372		James Edward Dingess.....	\$102.07
373	(203)	Alma Jean Dix.....	\$174.90

554		CLAIMS AGAINST THE STATE	[Ch. 46
374	(204)	Amie M. Dixon	\$250.00
375	(205)	Kathleen Dodson and Joshua Dodson.....	\$500.00
376	(206)	Jack L. Dolen	\$369.15
377	(207)	Robin C. Dolly	\$500.00
378	(208)	Brittany N. Domingo and	
379		Paul F. Domingo II.....	\$461.15
380	(209)	Marian D. Donley and John Donley.....	\$271.99
381	(210)	Deborah Dooley	\$2,000.00
382	(211)	Kelly Dorazio	\$397.00
383	(212)	Kevin Doss	\$1,650.00
384	(213)	Charles Lee Douglas III and	
385		Jessica Douglas	\$623.00
386	(214)	John K. Dugan and Helena M. Dugan	\$100.00
387	(215)	Michael F. Duplaga Jr.	\$500.00
388	(216)	Heather Dyson.....	\$250.00
389	(217)	Jeff Eanes and Historic	
390		Preservation & Development LLC	\$199.28
391	(218)	David H. Easter	\$185.54
392	(219)	Rebecca A. Eckenrode	\$162.87
393	(220)	Marla Wilcox Eddy	\$293.89
394	(221)	Rachel M. Edge.....	\$455.35
395	(222)	Sean A. Edgell.....	\$356.30
396	(223)	Timothy P. Edin and Jami M. Edin.....	\$100.00
397	(224)	Timothy P. Edin and Jami M. Edin.....	\$100.00

398	(225)	Teresa Edwards and Lloyd Edwards.....	\$190.01
399	(226)	David L. Eggleston and	
400		Anastacia L. Eggleston.....	\$238.97
401	(227)	Cherie Eicher, Heath B. Eicher	
402		and Daniel Baber.....	\$73.02
403	(228)	Cherie Eicher, Heath B. Eicher	
404		and Daniel Baber.....	\$68.37
405	(229)	Stacey A. Eisel	\$1,000.00
406	(230)	Brenda G. Elkins and Boyd R. Elkins.....	\$403.86
407	(231)	Frank Ellison	\$365.68
408	(232)	Jennifer R. Ervin	\$234.53
409	(233)	Richard D. Estep and Melissa K. Estep..	\$1,000.00
410	(234)	Patricia A. Evans.....	\$515.37
411	(235)	Robin Evans	\$924.32
412	(236)	William C. Evans and Julie Evans	\$273.48
413	(237)	John T. Fahey	\$462.55
414	(238)	Amy Fairchild and	
415		Michael Scott Fairchild	\$189.59
416	(239)	Sherry L. Fannin and Ricky Fannin	\$500.00
417	(240)	Antoinette Farkas	\$349.35
418	(241)	Larry N. Ferguson and	
419		Brenda L. Ferguson.....	\$217.94
420	(242)	Melissa D. Ferguson.....	\$250.00
421	(243)	G. Darin Fisher.....	\$300.00
422	(244)	Guy R. Fizer Jr.	\$404.00

556		CLAIMS AGAINST THE STATE	[Ch. 46
423	(245)	Kelly Fontaine.....	\$342.12
424	(246)	April Fore.....	\$323.30
425	(247)	Tina M. Forshey and Terry L. Forshey.....	\$61.08
426	(248)	Amanda Foster.....	\$191.67
427	(249)	Larry G. Foster.....	\$73.50
428	(250)	Jesse R. Francis and Megan R. Francis...	\$500.00
429	(251)	Julie Francis.....	\$500.00
430	(252)	Jeffery M. Freeze.....	\$399.00
431	(253)	Linda Friend.....	\$371.00
432	(254)	Danny Frye and Barbara Frye.....	\$151.06
433	(255)	James L. Galloway.....	\$276.66
434	(256)	Jason Galloway.....	\$869.39
435	(257)	Deborah Garrison.....	\$265.00
436	(258)	Yvonda L. Gatens.....	\$158.99
437	(259)	Jason Gautier.....	\$963.09
438	(260)	Amanda M. Gebhardt and	
439		Timothy D. Gebhardt.....	\$294.79
440	(261)	Ronald George.....	\$385.94
441	(262)	Wendy D. Gerard and Bryan S. Gerard.....	\$500.00
442	(263)	Ruth E. Gilday.....	\$500.00
443	(264)	William B. Giles.....	\$218.78
444	(265)	Ryan D. Gillespie.....	\$437.25
445	(266)	Richard J. Gimbl and Sarah B. Gimbl.....	\$107.00

446	(267)	Korena Glover.....	\$500.00
447	(268)	Linda Kay Gobble.....	\$743.80
448	(269)	Tim Golonka	\$250.00
449	(270)	James E. Goodman.....	\$365.70
450	(271)	Francis Goodrich.....	\$338.02
451	(272)	Beverly Goodwin	\$169.07
452	(273)	Christopher Grammer and	
453		Allegra Cornaglia	\$195.47
454	(274)	Patricia Grasser and Nathan L. Grasser	\$398.40
455	(275)	Nathan Graves.....	\$500.00
456	(276)	Laura Grayson and James Grayson.....	\$353.46
457	(277)	Walter L. Greenhowe Jr.	\$1,000.00
458	(278)	William M. Greenwalt.....	\$79.22
459	(279)	Albert J. Gregory.....	\$136.96
460	(280)	James Greynolds	\$695.26
461	(281)	Doyle T. Griffith	\$1,436.25
462	(282)	Jon A. Griffith.....	\$338.12
463	(283)	Linda J. Grimes	\$141.51
464	(284)	Stephen D. Haff.....	\$315.97
465	(285)	Rebecca K. Hager.....	\$424.51
466	(286)	Christine S. Hall.....	\$339.16
467	(287)	Danny Hall and Linda Hall	\$98.58
468	(288)	David Hall	\$261.44

558		CLAIMS AGAINST THE STATE	[Ch. 46
469	(289)	Labeth Hall.....	\$379.00
470	(290)	Linda L. Hall and Danny R. Hall	\$100.65
471	(291)	Danny Halstead and Stacy L. Halstead ...	\$237.53
472	(292)	Albert Hammond.....	\$336.21
473	(293)	Meagan Hammond and	
474		Christopher Hammond	\$500.00
475	(294)	Brad G. Hamrick and	
476		Courtney D. Hamrick	\$138.57
477	(295)	Tracey Handley and Timothy J. Handley.....	\$122.91
478	(296)	William H. Hanna	\$250.00
479	(297)	Jaime Leigh Harbert.....	\$209.61
480	(298)	Amber Daniela Harless	\$445.33
481	(299)	Richard A. Harmon and Jeremy S. Zinn.....	\$500.00
482	(300)	Annette Harner	\$111.00
483	(301)	Connie J. Harper.....	\$190.80
484	(302)	Jennifer A. Harper	\$228.69
485	(303)	Tara Harper and Brock Harper.....	\$500.00
486	(304)	Robin Harrah.....	\$150.00
487	(305)	Laura B. Harshbarger	\$192.88
488	(306)	Jan Barry Hatfield II.....	\$500.00
489	(307)	Brenda Sue Hawkins	\$465.34
490	(308)	Rhonda M. Hawkins.....	\$64.61
491	(309)	Kathy L. Hayes and Kimble Hayes.....	\$98.50

492	(310)	Anna M. Haynes.....	\$748.72
493	(311)	Jackie L. Hearld	\$354.41
494	(312)	Deborah J. Hedrick and John S. Hedrick...	\$104.33
495	(313)	Matthew Heiskell and Liza Heiskell	\$500.00
496	(314)	Ralph Hensley	\$363.56
497	(315)	William Hensley, By and	
498		on Behalf of Luther Hensley	\$3,031.00
499	(316)	Raymond L. Hensley Jr.....	\$153.70
500	(317)	Tony Herndon	\$89.02
501	(318)	Doris A. Herscher.....	\$95.40
502	(319)	Riley W. Hess.....	\$494.24
503	(320)	Randall Hill and Sarah Hill	\$500.00
504	(321)	Martha R. Hinchman and	
505		John Hinchman.....	\$300.00
506	(322)	Scott Brotherton and	
507		Madysen Hinchman	\$378.13
508	(323)	Gene Hodges and Emilee Hodges.....	\$500.00
509	(324)	Sally Hodgkiss	\$139.30
510	(325)	Tracy Hoffman and Gary Hoffman.....	\$500.00
511	(326)	Austin Holbert and Matt C. Holbert.....	\$970.35
512	(327)	Brandon Holdren.....	\$691.76
513	(328)	David M. Holley Sr. and Linda Holley.....	\$500.00
514	(329)	Jennifer Honaker	\$355.14
515	(330)	Stephen Honaker and Pamela Honaker...	\$250.00

560		CLAIMS AGAINST THE STATE	[Ch. 46
516	(331)	Pierce Hooper and Hannah Hooper.....	\$1,019.20
517	(332)	Carol Hooser and Benjamin Jay Hooser	\$383.55
518	(333)	Susan Hooton	\$1,500.00
519	(334)	Jeremy Hoover and Brittany Hoover	\$257.94
520	(335)	Jerry L. Hosaflook and	
521		Evelyn Hosaflook.....	\$500.00
522	(336)	Mary N. Howard	\$201.08
523	(337)	Tesla M. Hoyt and Jeanie Hoyt.....	\$500.00
524	(338)	Arlie Hubbard.....	\$379.20
525	(339)	Arlie Hubbard.....	\$253.47
526	(340)	Danny E. Hudnall and Diana S. Hudnall	\$62.01
527	(341)	Douglas N. Hughes and	
528		Melissa J. Hughes.....	\$158.02
529	(342)	Tyler Hull	\$1,000.00
530	(343)	James E. Hundley.....	\$500.00
531	(344)	Kenneth B. Hunley Jr. and	
532		Stephanie L. Hunley	\$479.34
533	(345)	William S. Hurst and Sue E. Hurst.....	\$156.78
534	(346)	Steve R. Hypes	\$727.97
535	(347)	Timothy Ickes.....	\$214.00
536	(348)	Christina Ingels and George Ingels	\$427.94
537	(349)	Ralph D. Irwin and Rosemary S. Irwin...	\$175.74
538	(350)	Melissa R. Isom.....	\$286.85
539	(351)	Fawnia Jackson	\$500.00

540	(352)	Lisa Anne Creasy Jahnke	\$537.16
541	(353)	Paul Jaquay.....	\$56.14
542	(354)	Larry B. Jarrell	\$250.00
543	(355)	Mary P. Jasinski	\$500.00
544	(356)	Bryan Jaumot	\$384.99
545	(357)	Johnny J. Jenkins.....	\$484.37
546	(358)	Michael C. Jenkins	\$255.76
547	(359)	Robert Johnson and Barbara Lee Miller ...	\$526.01
548	(360)	Bobby Johnson and Pamela H. Johnson....	\$114.30
549	(361)	Brandon Johnson.....	\$274.54
550	(362)	Cheryl E. Johnston	\$94.55
551	(363)	Isaac A. Jones and Jenny L. Jones	\$1,000.00
552	(364)	Randy P. Jones	\$222.40
553	(365)	Shauna Gayle Jones.....	\$500.00
554	(366)	Tamatha R. Jones and David L. Jones	\$110.96
555	(367)	Jones Trucking Inc. and Roy H. Jones....	\$1,237.33
556	(368)	Amanda Julian.....	\$185.42
557	(369)	Eva Kazee and William Kazee.....	\$411.65
558	(370)	Jonathan Edward Keesee.....	\$173.50
559	(371)	Anne L. Keller.....	\$74.02
560	(372)	Anne L. Keller.....	\$136.97
561	(373)	Anne L. Keller and Perry J. Keller.....	\$153.73

562	CLAIMS AGAINST THE STATE	[Ch. 46
562	(374) Ernest L. Keller Jr. and	
563	Lou Ann Keller	\$6,200.00
564	(375) James D. Kelley and Gail P. Kelley	\$358.05
565	(376) Richard E. Kelley	\$500.00
566	(377) Angela S. Kerns and John W. Kerns	\$564.00
567	(378) Brett M. Kerns	\$199.28
568	(379) Jerry D. Kerns	\$127.23
569	(380) William E. Keyser and Marsha L. Keyser ...	\$63.60
570	(381) Uzer Khan	\$379.20
571	(382) Neil B. Kidd and Kimberly D. Kidd	\$196.10
572	(383) Christopher Kinney	\$489.19
573	(384) Skye S. Kinser and Jimmy W. Crider	\$500.00
574	(385) Sarah Kittelstad and Thomas Kittelstad ..	\$500.00
575	(386) Robert Klein and Lana L. Klein	\$261.99
576	(387) Logan J. Kniceley and	
577	Courtney N. Kniceley	\$158.80
578	(388) Brice A. Knotts and	
579	Evie G. Brantmayer	\$250.00
580	(389) William A. Kolibash	\$224.70
581	(390) Merg Kong	\$397.74
582	(391) Raymond Kuderski	\$500.00
583	(392) Tracey A. Kudyba	\$500.00
584	(393) Tina D. Kwun	\$800.26
585	(394) Linda E. Kyle	\$281.40

586	(395)	Gwendolyn Lacy	\$216.00
587	(396)	Jennifer Lacy	\$304.00
588	(397)	Matthew Lahr	\$500.00
589	(398)	Barbara Lambert and Lenia Lambert ...	\$1,000.00
590	(399)	Merritt T. Lambert	\$221.54
591	(400)	Tamala Lanham.....	\$407.12
592	(401)	Frank S. Law and Tanya Law	\$303.88
593	(402)	Denise Leach.....	\$500.00
594	(403)	Ramona Leach.....	\$414.40
595	(404)	Susan Leasure.....	\$103.79
596	(405)	Maria D. Leiss and Jay A. Leiss.....	\$500.00
597	(406)	Christopher A. Lemon and	
598		Jessica P. Lemon	\$97.53
599	(407)	Melissa Lester	\$264.77
600	(408)	Stacey Levendorf	\$373.10
601	(409)	Buddy Joe Lewis	\$554.00
602	(410)	Heidi J. Lewis and Ricky Lewis.....	\$98.69
603	(411)	Kirk Lightner.....	\$164.60
604	(412)	Lloyd W. Lightner Jr.....	\$500.00
605	(413)	Kim M. Liming	\$250.00
606	(414)	Michael Little	\$1,000.00
607	(415)	Amber D. Lloyd	\$78.00
608	(416)	Gary Long	\$157.46

564		CLAIMS AGAINST THE STATE	[Ch. 46
609	(417)	Rita Jane Lovejoy.....	\$207.66
610	(418)	Rita Jane Lovejoy.....	\$209.44
611	(419)	Thomas Lovejoy.....	\$491.96
612	(420)	Rachel L. Lowe and	
613		Christopher C. Lowe	\$528.94
614	(421)	Michael A. Lowry and Megan M. Lowry....	\$45.56
615	(422)	Beth Loy.....	\$373.95
616	(423)	Tabitha Luckey.....	\$1,000.00
617	(424)	Jeremy Luke	\$460.00
618	(425)	Joyce S. Lupardus and James Lupardus..	\$154.55
619	(426)	David J. Lutskus and Tiffany R. Lutskus ..	\$393.26
620	(427)	Terri E. Lyons and Foster M. Lyons	\$56.71
621	(428)	Nathan Mace and Cassie Mace	\$455.77
622	(429)	Karen Machen	\$254.29
623	(430)	Brandon Lee Madden.....	\$280.27
624	(431)	Caroline Mader.....	\$314.59
625	(432)	Jerry Mahoney.....	\$178.56
626	(433)	Patsy Mahood.....	\$338.27
627	(434)	Judith Maisel	\$303.27
628	(435)	Adrian Malick	\$1,712.67
629	(436)	Tara Manchin	\$219.33
630	(437)	Julie E. Mancini	\$500.00
631	(438)	Mia Marcum and Matthew Steele	\$183.40

632	(439)	Noah Marcum and Deborah Marcum.....	\$492.75
633	(440)	George A. Marfield Jr. and	
634		LaDonna L. Marfield.....	\$477.56
635	(441)	Vincent Marino and	
636		Custom Contracting	\$309.93
637	(442)	Phillip Marquart	\$250.00
638	(443)	Carey Marra	\$133.75
639	(444)	Judy K. Marshall	\$800.00
640	(445)	Sarah Satterfield Marshall.....	\$368.54
641	(446)	Michael Martin and Lynn Martin.....	\$1,000.00
642	(447)	Sharon L. Martin	\$250.00
643	(448)	Robert J. Matheny	\$491.37
644	(449)	Carol D. Mattox	\$500.00
645	(450)	David Maxson and Kim Maxson	\$202.41
646	(451)	Julie D. May	\$64.30
647	(452)	Karen A. May.....	\$500.00
648	(453)	Johnathan Maynard	\$160.14
649	(454)	Rita Maynard.....	\$90.09
650	(455)	Wanda Maynard.....	\$500.00
651	(456)	Jennifer McCafferty and	
652		Clifford Terrell	\$500.00
653	(457)	Greg McCoy.....	\$505.52
654	(458)	Raymona L. McDonald and	
655		Robert L. McDonald	\$612.62

566		CLAIMS AGAINST THE STATE	[Ch. 46
656	(459)	James McHugh and Marianna McHugh..	\$500.00
657	(460)	Dennis McNaboe.....	\$127.55
658	(461)	Dennis L. McNinch.....	\$335.93
659	(462)	Kevin Todd McPherson and	
660		Stacy McPherson.....	\$383.00
661	(463)	Casby Mitchell Meadows.....	\$221.38
662	(464)	Judson A. Means and	
663		Sharon Lynn Means	\$270.11
664	(465)	Neani M. Mee and Douglas Mee	\$250.00
665	(466)	Colleen C. Megna.....	\$116.54
666	(467)	Ethan L. Mellott	\$500.00
667	(468)	Dennis Melton.....	\$500.00
668	(469)	Presley M. Merrill	\$91.16
669	(470)	Kimberly D. Merritt and	
670		Jessica A. Cochran	\$372.99
671	(471)	Barbara Ann Messenger and	
672		Patrick Messenger	\$242.93
673	(472)	Emma Messer.....	\$1,854.64
674	(473)	Robin Metheny and Glen Metheny	\$500.00
675	(474)	Susan J. Mick and David E. Mick.....	\$127.33
676	(475)	Jamie Midcap and Johnnie Midcap.....	\$500.00
677	(476)	Susan D. Midkiff and	
678		Michael H. Midkiff	\$265.00
679	(477)	Barbara C. Milam, Joel Scott Milam,	
680		as Power of Attorney for	
681		Barbara C. Milam and Colin Milam.....	\$289.80

682	(478)	Darienne Miller	\$459.76
683	(479)	Madison Miller.....	\$259.60
684	(480)	Raechelle D. Miller	\$201.44
685	(481)	Bernice Mills.....	\$402.69
686	(482)	Jennifer Barber Minchau.....	\$310.05
687	(483)	David K. Minturn and	
688		Sandra L. Minturn	\$246.00
689	(484)	Carl D. Moore	\$500.00
690	(485)	Ellen Moore and Jesse Moore	\$1,728.31
691	(486)	Joseph Moore Jr., Victoria Kelly-Moore	
692		and Joe Moore	\$151.94
693	(487)	Olivia Moore	\$458.50
694	(488)	Timothy Moore	\$146.00
695	(489)	Errol F. Morgan.....	\$222.39
696	(490)	Virginia Elaine Morris and	
697		Brian N. Morris	\$290.22
698	(491)	Amy G. Moulder and	
699		Rudy M. Moulder.....	\$1,000.00
700	(492)	Steven Mowish and Debra Mowish	\$139,750.00
701	(493)	Martha Moyers	\$27,787.50
702	(494)	Leslie Moziejko and Randy Moziejko	\$500.00
703	(495)	Briana Mullenax.....	\$500.00
704	(496)	Jean Mullins and Ronnie L. Mullins	\$200.00
705	(497)	Timmy Mullins.....	\$4,250.46

568		CLAIMS AGAINST THE STATE	[Ch. 46
706	(498)	Emily Murphy	\$500.00
707	(499)	Karen Sue Murphy and	
708		Benjamin L. Murphy	\$166.76
709	(500)	Lori D. Musgrave and James Musgrave	\$437.45
710	(501)	Jill Myers and Sarah Mayle.....	\$614.76
711	(502)	Carrie A. Nelson.....	\$500.00
712	(503)	George R. Nelson and	
713		Stephanie L. Nelson	\$500.00
714	(504)	Valori Newman	\$369.65
715	(505)	Eric Nichols.....	\$500.00
716	(506)	Donavan Nicholson II	\$2,000.00
717	(507)	Angelita Nixon	\$382.61
718	(508)	Angelita Nixon	\$1,000.00
719	(509)	Linda Norman	\$135.15
720	(510)	Larry C. Nottingham and	
721		Carol S. Nottingham.....	\$801.40
722	(511)	NTS LLC and Noble Oil Services Inc....	\$2,000.76
723	(512)	Michael D. Nutter.....	\$424.82
724	(513)	Mitchell Allen Nutter	\$435.00
725	(514)	Jill Ray Oliver	\$132.73
726	(515)	Michael H. Oliver.....	\$385.34
727	(516)	Priscilla Oliver and Richard Oliver.....	\$71.16
728	(517)	Frank Oliverio	\$1,000.00
729	(518)	Travis L. Olson.....	\$2,092.71

730	(519)	Jessica Orgovan.....	\$500.00
731	(520)	Andy A. Orinick.....	\$279.25
732	(521)	Bernie Osborne and Elizabeth Osborne.....	\$500.00
733	(522)	Jeffrey C. Ott and Susan L. Ott	\$500.00
734	(523)	Jason Otto.....	\$195.37
735	(524)	Megan Ouellette	\$120.13
736	(525)	Andrew J. Overbaugh.....	\$911.39
737	(526)	Jarrod Owsley and Jennifer Owsley	\$500.00
738	(527)	Steven E. Page.....	\$293.54
739	(528)	Leslie Painter.....	\$1,000.00
740	(529)	Bettylou Palmer.....	\$371.15
741	(530)	Christopher Pappas, Ernest Pappas	
742		and Yvette Pappas	\$421.00
743	(531)	Jessie Parker and Norma Parker.....	\$7,883.64
744	(532)	Kathleen Parkinson	\$169.58
745	(533)	Carl Parsons	\$100.00
746	(534)	Evelyn J. Parsons	\$500.00
747	(535)	H. Dewayne Parsons	\$1,019.70
748	(536)	Larry E. Parsons	\$380.92
749	(537)	Stephen D. Parsons.....	\$297.45
750	(538)	Stephen Parsons and Linda J. Parsons	\$358.45
751	(539)	James L. Patterson and Eva J. Patterson	\$210.42
752	(540)	Evan S. Pauley	\$3,950.00

570		CLAIMS AGAINST THE STATE	[Ch. 46
753	(541)	John Pauley and Deborah Pauley	\$315.64
754	(542)	Sharon Lee Paxton	\$149.30
755	(543)	Lonzo Glen Payne and Nancy Jean Payne ..	\$89.35
756	(544)	Samuel R. Payton and Marsha L. Payton ..	\$293.62
757	(545)	Danielle Pearson.....	\$304.68
758	(546)	Edward Peirce	\$225.65
759	(547)	Phillip Bruce Pennington and	
760		Regena Ann Pennington.....	\$200.00
761	(548)	Jeanette L. Perry.....	\$250.00
762	(549)	Emily D. Pertil and Franz Pertil	\$42.40
763	(550)	Ethan Peters.....	\$500.00
764	(551)	Aaron Petry and Kristin Petry	\$500.00
765	(552)	Christine Pflieger	\$241.66
766	(553)	Karen D. Phillips and Brett B. Phillips ...	\$335.46
767	(554)	Deanna Pickens	\$362.21
768	(555)	Maurice Pisciotano, Matthew Pisciotano	
769		& Pierce Chiropractic Clinic	\$438.70
770	(556)	Mousumi D. Pinki	\$500.00
771	(557)	Karen Pitsenbarger	\$100.00
772	(558)	Kathy A. Plum and Shedrick Plum	\$138.07
773	(559)	Kevin D. Poling and Pamela June Poling..	\$229.14
774	(560)	Kimberly L. Poticher and	
775		Patrick J. Poticher.....	\$500.00
776	(561)	Ann Potter and Douglas Potter.....	\$931.54

777	(562)	Rachel Price and Travis Price	\$500.00
778	(563)	Kenneth Prince	\$500.00
779	(564)	Rhonda L. Pritt	\$500.00
780	(565)	Charles M. Proctor Sr. and	
781		Lou Ann Proctor	\$1,000.00
782	(566)	Charles M. Proctor Sr. and	
783		Lou Ann Proctor	\$1,498.65
784	(567)	Betty Jo Pryce-Morehead	\$500.00
785	(568)	Lisa D. Raber and Bryan Raber	\$393.26
786	(569)	Melissa A. Raber and Joseph A. Raber...	\$6,500.00
787	(570)	Jan A. Rapp and Byron L. Rapp	\$175.96
788	(571)	Deborah L. Ratliff and James Ratliff	\$172.25
789	(572)	Virginia Rayburn and	
790		Gregory L. Rayburn	\$294.25
791	(573)	Paul A. Redford and Suzette M. Redford	\$519.77
792	(574)	Patrick J. Reilly and Paula L. Reilly	\$89.99
793	(575)	Lisa Renner and David Renner	\$456.00
794	(576)	Steve A. Reynolds	\$500.00
795	(577)	Clara P. Rhodes and Thomas E. Rhodes ...	\$250.00
796	(578)	Daniel Paul Rhodes	\$466.62
797	(579)	Steven Rhyne	\$1,408.89
798	(580)	Jack J. Richmond	\$500.00
799	(581)	Travis Riffe	\$508.94
800	(582)	James W. Riffle III and Jamie D. Riffle	\$881.99

572		CLAIMS AGAINST THE STATE	[Ch. 46
801	(583)	Jeffrey S. Riley	\$457.68
802	(584)	Donald G. Ritchie and	
803		Jennifer L. Ritchie	\$224.72
804	(585)	Corinna O. Van Dyne Ritz	\$370.00
805	(586)	Howard Robbins and Gloria Robbins.....	\$1,627.44
806	(587)	Michael Robinson and	
807		Deanna Robinson	\$732.13
808	(588)	Rebecca Robinson	\$378.86
809	(589)	Alyssa E. Romeo and Joseph M. Romeo...	\$103.28
810	(590)	John J. Roop	\$223.63
811	(591)	McKenzie Rose	\$147.47
812	(592)	Terry Rose	\$116.51
813	(593)	Janice Ross	\$342.75
814	(594)	Patrick Rowan and Anna Rowan	\$500.00
815	(595)	Ieva Roznere.....	\$77.37
816	(596)	Joel J. Rugg	\$500.00
817	(597)	Donna Rumer	\$500.00
818	(598)	Gary Runyon and Carla Runyon	\$178.27
819	(599)	John M. Ruppert.....	\$159.00
820	(600)	Kimberly A. Rymer and	
821		Kenneth D. Rymer	\$500.00
822	(601)	Michael Salmons II	\$245.87
823	(602)	Steve Saltis Sr. and Twyla Saltis.....	\$500.00
824	(603)	Vicky Sammons	\$782.31

825	(604)	Patty Samsell and George L. Samsell	\$169.60
826	(605)	Everett E. Sansom	\$214.85
827	(606)	Diane M. Santomena	\$498.39
828	(607)	Karen S. Santowasso and	
829		Artie Santowasso	\$95.59
830	(608)	Karen S. Santowasso and	
831		Artie Santowasso	\$89.99
832	(609)	Mohamad Sarraj and Ghaddy Alsaty	\$344.27
833	(610)	John Saunders	\$1,051.45
834	(611)	Glenn Savage and Jill Savage	\$1,000.00
835	(612)	Thomas Savory and	
836		Dianna K. Dailey-Savory	\$500.00
837	(613)	Gary Scarbough	\$307.88
838	(614)	Jona L. Scarbro	\$370.34
839	(615)	Kelsey Scariot	\$214.00
840	(616)	David P. Schimmel	\$571.46
841	(617)	Carl R. Schmalz	\$249.64
842	(618)	Charles Schott and Lorrie Schott	\$239.44
843	(619)	Lorrie Schott and Charles Schott	\$387.58
844	(620)	Jimmy L. Scott and Edna K. Scott	\$655.14
845	(621)	Robert J. Semin and Elaine Semin	\$500.00
846	(622)	Billy A. Shaffer	\$100.00
847	(623)	Melinda Shaffer	\$368.30
848	(624)	Samuel David Shalhoub	\$250.00

849	(625)	Deborah Shamblin.....	\$329.00
850	(626)	Leslie D. Shamblin and Larry Shamblin ...	\$239.68
851	(627)	Kumud Sharma and Sairam Gangeddula.....	\$500.00
852	(628)	Robert G. Sheets and Katelyn M. Sheets...	\$415.00
853	(629)	Kelly D. Shepherd.....	\$211.94
854	(630)	Patricia L. Sheppard.....	\$500.00
855	(631)	Connie Shipley	\$914.05
856	(632)	Pamela D. Shockey and Marc Shockey ..	\$267.50
857	(633)	Jeffrey Steven Sholtis and	
858		Stacy L. Sholtis	\$500.00
859	(634)	Richard T. Short.....	\$476.20
860	(635)	Theodore Z. Showalter and	
861		Whiteside Cadillac	\$491.95
862	(636)	John B. Shultz and Mary Louise Shultz..	\$238.77
863	(637)	Kelly J. Shuman	\$250.00
864	(638)	Renia Siegman and Ronald Siegman	\$595.67
865	(639)	Alysia Sigman.....	\$554.49
866	(640)	William D. Sigman.....	\$868.00
867	(641)	Dennis C. Simmons.....	\$286.90
868	(642)	James S. Simmons.....	\$500.00
869	(643)	Evelyn Skeens and Roger D. Goodman ...	\$397.78
870	(644)	Rusty Slie and Joann Slie.....	\$126.00
871	(645)	Larry A. Sliva.....	\$1,000.00

872	(646)	Lisa Small and Marvin Small.....	\$500.00
873	(647)	Shawn Y. Smarik and David Smarik	\$141.30
874	(648)	Brock W. Smith and Peggy J. Smith.....	\$84.95
875	(649)	Christopher L. Smith and	
876		Jennifer Smith	\$784.91
877	(650)	David Smith	\$324.00
878	(651)	Glenn R. Smith.....	\$85.86
879	(652)	Jodi Ann Smith.....	\$500.00
880	(653)	Justin A. Smith.....	\$667.65
881	(654)	Kathleen I. Smith	\$217.29
882	(655)	Kenneth L. Smith and Tina A. Smith.....	\$500.00
883	(656)	Matthew E. Smith and	
884		Amanda M. Smith	\$117.60
885	(657)	Okey Smith.....	\$210.93
886	(658)	Harry L. Sneigle	\$500.00
887	(659)	James L. Snider	\$161.60
888	(660)	Joseph Snopps and Jessica Snopps.....	\$373.12
889	(661)	Frances M. Sokos and Gus M. Sokos.....	\$302.05
890	(662)	Frances M. Sokos and Gus M. Sokos.....	\$238.50
891	(663)	Joseph Somers	\$511.91
892	(664)	Kevin T. Sparks and Kelly Sparks	\$932.18
893	(665)	Steven James Spears	\$411.28
894	(666)	William Spence and Arlene Spence	\$83.21

576		CLAIMS AGAINST THE STATE	[Ch. 46
895	(667)	Terry Sprouse and Denise Mae Sprouse....	\$239.94
896	(668)	Paul Stacy and Sharon Stacy.....	\$166.00
897	(669)	Adam Stafford, Timothy Paul Ash	
898		and Tesa Hope Ash	\$90.63
899	(670)	Anthony B. Stake Jr.	\$380.00
900	(671)	Bonny Starkey.....	\$500.00
901	(672)	Nancy Stemple	\$500.00
902	(673)	James Stewart and Jill Stewart.....	\$194.74
903	(674)	Melissa Stewart.....	\$886.86
904	(675)	Kasha Stitt and Jason B. Stitt.....	\$238.22
905	(676)	Sarah S. Stolze	\$500.00
906	(677)	Paul C. Stout and Susan J. Stout	\$500.00
907	(678)	Thomas A. Stout and Paula J. Stout.....	\$250.00
908	(679)	Carl Straub Jr. and Tammy Straub.....	\$439.14
909	(680)	Gary Sumpter Jr.	\$500.00
910	(681)	Floyd F. Sutherland.....	\$422.18
911	(682)	Barbara E. Swartz.....	\$500.00
912	(683)	Jeri Swingle.....	\$500.00
913	(684)	Mary E. Sword	\$239.90
914	(685)	Barbara L. Tatterson.....	\$250.00
915	(686)	Marcy Taylor.....	\$354.04
916	(687)	Howard L. Templin.....	\$500.00
917	(688)	Greg Tenley and Lori Tenley.....	\$321.91

918	(689)	Paul J. Tepe and Inge A. Tepe	\$257.99
919	(690)	Lee Theaker.....	\$327.94
920	(691)	Alyssa Thibaut and Jerome Thibaut.....	\$159.00
921	(692)	Iva Thomas.....	\$448.40
922	(693)	Janet Thompson	\$200.76
923	(694)	Olivia Thompson.....	\$500.00
924	(695)	Eric L. Tichenor and Terri L. Tichenor...	\$576.87
925	(696)	Carolyn Dianne Tincher.....	\$500.00
926	(697)	Lawrence Tingler Jr.	\$284.81
927	(698)	Mary A. Tinney.....	\$200.00
928	(699)	Damian Tofte	\$500.00
929	(700)	Brady C. Totten and Betty S. Totten....	\$3,525.65
930	(701)	Daniel Trautwein and Nancy Trautwein....	\$326.88
931	(702)	Ralph L. Travis and Irene Travis	\$500.00
932	(703)	Leah Marie Trent.....	\$148.19
933	(704)	Trimble Inc.....	\$177,258.40
934	(705)	Jeffrey Allen Tucker and	
935		Christina Renee Tucker.....	\$202.30
936	(706)	Jerry Tucker	\$149.37
937	(707)	Joseph Tucker.....	\$315.88
938	(708)	Crista Turner	\$500.00
939	(709)	Debbie Vac and Dennis A. Vac	\$297.97
940	(710)	Alfred G. Valle.....	\$473.32

941	(711)	Constance Van Gilder and	
942		Gregory T. Van Gilder	\$290.00
943	(712)	James Vanhoose and Paula Vanhoose	\$628.71
944	(713)	Velvet L. Vaughn	\$258.62
945	(714)	Jody Veith and Robert Veith.....	\$202.35
946	(715)	Natalie D. Vinton	\$500.00
947	(716)	Natalie D. Vinton	\$112.58
948	(717)	Shelby Vrescak and Julius Vrescak	\$159.98
949	(718)	Aaron Wagner	\$95.30
950	(719)	Sandra S. Walker and Gary L. Walker....	\$500.00
951	(720)	Ryan S. Walther	\$362.33
952	(721)	Sarah Marie Ware.....	\$252.28
953	(722)	Roy L. Watkins and Anita J. Watkins..	\$1,000.00
954	(723)	Juanita G. Watts and David W. Watts.....	\$171.20
955	(724)	Monica Renee Watts	\$552,500.00
956	(725)	Deborah A. Weaver and	
957		Mark A. Weaver.....	\$365.70
958	(726)	Pamela Weaver and Bruce Weaver.....	\$1,000.00
959	(727)	Tyler A. Webb.....	\$250.00
960	(728)	Craig A. Welch.....	\$250.00
961	(729)	Ian Welch and Krystal Wicker	\$573.05
962	(730)	Lacy L. Welch.....	\$1,000.00
963	(731)	Lori A. Wells.....	\$342.57

964	(732)	Bartlett J. Wheeler.....	\$124.04
965	(733)	Danny W. Wheeler and	
966		Tenyah N. Wheeler	\$404.85
967	(734)	Heather Whipkey and Mark Whipkey	\$419.60
968	(735)	Joanna White.....	\$168.54
969	(736)	Mark S. White and Pamela C. White	\$392.55
970	(737)	Timothy W. White and Randi L. White	\$500.00
971	(738)	Vincen W. White and Bonnie White.....	\$500.00
972	(739)	Brett L. Whiting and Sarah J. Whiting....	\$455.04
973	(740)	Bruce S. Whoolery and	
974		Rose Marie Whoolery	\$129.27
975	(741)	David R. Widdifield	\$617.02
976	(742)	Charles Wiener and Nancy Ohrenstein ...	\$500.00
977	(743)	Sean Wightman and Rodney Wightman ...	\$119.50
978	(744)	Lee Wiley.....	\$1,000.00
979	(745)	Serena Wilkerson	\$532.49
980	(746)	Nathan F. Wilkinson and	
981		Julie R. Wilkinson.....	\$445.14
982	(747)	Joyce Williams	\$495.54
983	(748)	Roger R. Williams and	
984		Kandy K. McCauley	\$151.58
985	(749)	April F. Williams-Early.....	\$299.60
986	(750)	Michael Williamson and	
987		McKenna Williamson	\$92.88
988	(751)	Susan R. Wilson and John Wilson	\$332.85

580		CLAIMS AGAINST THE STATE	[Ch. 46
989	(752)	Timothy Wilson and Michelle Wilson....	\$112.99
990	(753)	Kipp Wimmer.....	\$389.02
991	(754)	Matthew J. Winans.....	\$948.64
992	(755)	James S. Wise.....	\$500.00
993	(756)	Pauletta Witt.....	\$500.00
994	(757)	Ahmed Witten.....	\$281.98
995	(758)	Amy M. Wolfe and Andrew J. Wolfe.....	\$133.75
996	(759)	Peggy J. Wolfe.....	\$500.00
997	(760)	Ronald P. Wood.....	\$219.31
998	(761)	Nancy J. Wooddell.....	\$279.42
999	(762)	Gary Workman.....	\$454.00
1000	(763)	Eddie Beryl Workman and	
1001		Laura Parker.....	\$1,200.00
1002	(764)	Barbara Wright.....	\$449.40
1003	(765)	Brian F. Wright and Amanda M. Wright....	\$236.47
1004	(766)	Jacob Turner Wright.....	\$500.00
1005	(767)	Kyle P. Wyjad and Alyssa N. Wyjad.....	\$253.98
1006	(768)	Michele Yates.....	\$1,380.00
1007	(769)	Allen Yeager.....	\$250.00
1008	(770)	Carolyn Young and James Young.....	\$275.51
1009	(771)	Daniel R. Young.....	\$239.53
1010	(772)	Ronald W. Young.....	\$180.91
1011	(773)	Luther M. Young Jr.....	\$222.58

1012 (o) Claim against the Department of Transportation,
1013 Division of Motor Vehicles:

1014 (TO BE PAID FROM STATE ROAD FUND)

1015 Paul Ritchey and Dianna Ritchey.....\$180.00

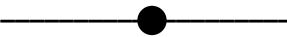
1016 (p) Claims against the Department of Veterans
1017 Assistance:

1018 (TO BE PAID FROM GENERAL REVENUE FUND)

1019 (1) Carl E. Short.....\$9,616.56

1020 (2) WV Association of
1021 Rehabilitation Facilities, Inc.\$2,148.62

1022 The Legislature finds that the above moral obligations
1023 and the appropriations made in satisfaction thereof shall be
1024 the full compensation for all claimants and that prior to the
1025 payments to any claimant provided in this bill, the
1026 Legislative Claims Commission shall receive a release from
1027 said claimant releasing any and all claims for moral
1028 obligations arising from the matters considered by the
1029 Legislature in the finding of the moral obligations and the
1030 making of the appropriations for said claimant. The
1031 Legislative Claims Commission shall deliver all releases
1032 obtained from claimants to the department against which the
1033 claim was allowed.



CHAPTER 47

(Com. Sub. for S. B. 340 - By Senators Trump and Stollings)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to repeal §33-20F-1, §33-20F-1a, §33-20F-2, §33-20F-3, §33-20F-4, §33-20F-5, §33-20F-7, §33-20F-8, §33-20F-9, §33-20F-10, §33-20F-11, and §33-20F-12 of the Code of West Virginia, 1931, as amended, relating to obsolete provisions for the initial formation and operation of the West Virginia Physicians' Mutual Insurance Company.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20F. PHYSICIANS' MUTUAL INSURANCE COMPANY.

§1. Repeal of article creating Physicians' Mutual Insurance Company Act.

1 That §33-20F-1 through §33-20F-12 of the Code of
2 West Virginia are repealed.

●

CHAPTER 48

**(H. B. 2608 - By Delegates Nelson, Criss and
Espinosa)**

[Passed March 1, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2019.]

AN ACT to repeal §61-3-39l of the Code of West Virginia, 1931, as amended, relating to requiring printing the date a consumer deposit account was opened on paper check.

Be it enacted by the Legislature of West Virginia:

§61-3-39l. Checks on consumer deposit accounts to show date account was opened; consumer deposit account defined.

1 [Repealed.]

●

CHAPTER 49

(Com. Sub. for S. B. 360 - By Senator Trump)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §46A-6N-1, §46A-6N-2, §46A-6N-3, §46A-6N-4, §46A-6N-5, §46A-6N-6, §46A-6N-7, §46A-6N-8, and §46A-6N-9, all relating to consumer litigation financing; providing that a litigation financier shall register as a litigation financier in this state; providing registration requirements for business entities,

partnerships, and individuals; providing that litigation financiers shall secure a bond or an irrevocable letter of credit; providing to whom the bond is payable; requiring litigation financiers to amend their registration if their information changes or becomes inaccurate or incomplete; providing that the Secretary of State may promulgate rules; providing that the terms of a litigation financing transaction shall be set forth in a completed, written contract; providing that the litigation financing contract shall contain a right of rescission; providing that a litigation financing contract shall contain certain written acknowledgements and disclosures; providing that a litigation financier shall not pay, or offer to pay, commissions, referral fees, or other consideration to any attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees for referring a consumer to the litigation financier; providing that a litigation financier shall not accept commissions, referral fees, rebates, or other consideration; providing that a litigation financier shall not advertise false or misleading information; providing that a litigation financier shall not refer a consumer or potential consumer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist; permitting a litigation financier to refer a consumer without legal representation to a local or state bar referral service; providing that a litigation financier shall supply copies of the contract to the consumer and the consumer's attorney; providing that a litigation financier shall not attempt to waive any of a consumer's remedies; providing that a litigation financier shall not attempt to effect mandatory arbitration or otherwise effect waiver of a consumer's right to a jury trial; providing that a litigation financier shall not offer or provide legal advice; providing that a litigation financier shall not assign a litigation financing contract to a third party; providing certain exceptions to assignment prohibition; providing that a litigation financier shall not report a consumer to a credit reporting agency; providing that a litigation financier shall not receive any right to direct or make decisions with respect to the conduct of a consumer's legal claim; providing that an attorney or law firm retained by a consumer shall not have a financial interest in,

and shall not receive referral fees or other consideration from, a company offering litigation financing to consumers; providing that a litigation financing contract shall contain certain disclosures and terms; providing form disclosures; requiring disclosure of a litigation financing agreement to other litigation parties without awaiting a discovery request unless otherwise stipulated or ordered by the court; providing that a violation shall render the contract unenforceable; providing that a court may assess costs and attorneys' fees against the defendant; clarifying authority of the Attorney General; providing that a contingent right to receive an amount under a legal claim may be assigned by a consumer; providing a priority of liens; providing exceptions for certain liens and claims; providing a maximum annual fee; providing a maximum frequency of annual fee charges; providing that fees may compound semiannually but may not compound based on any lesser time period; providing means for calculating annual percentage fee or rate of return; providing a maximum term for assessing fees; restricting incorporation of prior obligations; prohibiting litigation financiers from knowingly providing financing to a consumer with existing obligations to another litigation financier except under certain circumstances; and permitting multiple litigation financiers to contemporaneously provide financing to a consumer when the consumer and the consumer's attorney consent to the agreement in writing.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6N. CONSUMER LITIGATION FINANCING.

§46A-6N-1. Definitions.

1 For purposes of this article:

2 (1) "Consumer" means any natural person who resides,
3 is present, or is domiciled in this state;

4 (2) "Litigation financier" means a person, entity, or
5 partnership engaged in the business of litigation financing;
6 and

7 (3) “Litigation financing” or “litigation financing
8 transaction”:

9 (A) Means a nonrecourse transaction in which financing
10 is provided to a consumer in return for a consumer’s
11 assigning to the litigation financier a contingent right to
12 receive an amount of the potential proceeds of the
13 consumer’s judgment, award, settlement, or verdict
14 obtained with respect to the consumer’s legal claim; and

15 (B) Does not include:

16 (i) Legal services provided on a contingency fee basis,
17 or advanced legal costs, where such services or costs are
18 provided to or on behalf of a consumer by an attorney
19 representing the consumer in the dispute and in accordance
20 with the West Virginia Rules of Professional Conduct;

21 (ii) A consumer loan, as defined by §46A-1-102 of this
22 code;

23 (iii) A commercial tort claim, as defined by §46-9-102
24 of this code;

25 (iv) A claim under the Workers’ Compensation Law,
26 compiled in chapter 23 of this code; or

27 (v) Normal or course of business lending or financing
28 arrangements between an attorney or law firm and a lending
29 institution.

§46A-6N-2. Litigation financier; registration; bond; public record; rules.

1 (a)(1) No litigation financier shall engage in a litigation
2 financing transaction in this state unless it is registered as a
3 litigation financier in this state.

4 (2) A litigation financier that is a business entity or
5 partnership is registered in this state if:

6 (A) It is in compliance with the bond requirements of
7 §46A-6N-2(b) of this code;

8 (B) It has a status of active and is in good standing as
9 reflected in the records of the Secretary of State; and

10 (C) Its charter, articles of organization, certificate of
11 limited partnership, or other organizational document, or, if
12 a foreign entity, its West Virginia application for a
13 certificate of authority, contains a statement that it shall be
14 designated as a litigation financier pursuant to this article.

15 (3) A litigation financier that is not a business entity or
16 partnership is registered in this state if:

17 (A) It is in compliance with the bond requirements of
18 §46A-6N-2(b) of this code; and

19 (B) It files an application for registration as a litigation
20 financier on a form prescribed by the Secretary of State that
21 contains the following:

22 (i) Applicant's full legal name;

23 (ii) Business name of applicant, if any;

24 (iii) Physical street address and mailing address of the
25 applicant;

26 (iv) A telephone number through which the applicant
27 can be reached;

28 (v) The name, physical street address, mailing address,
29 and telephone number for a West Virginia registered agent
30 appointed to accept service of process on behalf of the
31 applicant;

32 (vi) A statement that the applicant shall be designated as
33 a litigation financier pursuant to this article; and

34 (vii) Any other information the Secretary of State deems
35 necessary.

36 (b)(1) Each litigation financier shall file with the
37 Secretary of State and have approved by the Office of the
38 West Virginia Attorney General a surety bond or
39 irrevocable letter of credit issued and confirmed by a
40 financial institution authorized by law to transact business
41 in the state of West Virginia in an amount not less than
42 \$50,000.

43 (2) Such bond shall be payable to this state for the use
44 of the Attorney General and any person who may have a
45 cause of action against the obligor of the bond for any
46 violation of this article. The bond shall continue in effect so
47 long as a litigation financier is designated as a litigation
48 financier in the records of the Secretary of State.

49 (c) A litigation financier shall amend its registration
50 with the Secretary of State within 30 days whenever the
51 information contained in such record changes or becomes
52 inaccurate or incomplete in any respect.

53 (d) The Secretary of State, as appropriate, may
54 promulgate rules in implementing this article, including, but
55 not limited to, the adoption of fees to cover any
56 administrative costs relating to administering this article.

§46A-6N-3. Litigation financier requirements.

1 A litigation financier shall fulfill each of the following
2 requirements when engaged in litigation financing:

3 (1) The terms of the litigation financing transaction shall
4 be set forth in a written contract that is completely filled in
5 with no incomplete sections when the contract is offered or
6 presented to the consumer;

7 (2) The litigation financing contract shall contain a right
8 of rescission, allowing the consumer to cancel the litigation
9 financing contract without penalty or further obligation if,
10 within five business days following the consumer's receipt
11 of the funds, or execution of the litigation financing
12 contract, whichever is later, the consumer gives notice of

13 the rescission and returns any money already provided to
14 the consumer by the litigation financier;

15 (3) The litigation financing contract shall contain a
16 written acknowledgment by the consumer of whether the
17 consumer is represented by an attorney in the dispute;

18 (4) If the consumer acknowledges that the consumer is
19 represented by an attorney in the dispute, the litigation
20 financing contract shall include a written acknowledgment
21 executed by the consumer's attorney in the dispute in which
22 the attorney acknowledges all of the following:

23 (A) The attorney has had the opportunity to review the
24 litigation financing contract on behalf of the consumer;

25 (B) The attorney is representing the consumer with
26 regard to the dispute that is the subject of the litigation
27 financing contract;

28 (C) The attorney has neither received nor paid a referral
29 fee or any other consideration from or to the litigation
30 financier, nor will the attorney receive or pay such a fee in
31 the future; and

32 (D) In the event that proceeds are paid into a settlement
33 fund or trust, the litigation financier shall notify the
34 administrator of the fund or trust of any outstanding liens
35 arising from the litigation financing contract.

§46A-6N-4. Litigation financier prohibitions.

1 (a) A litigation financier shall not:

2 (1) Pay or offer to pay commissions, referral fees, or
3 other forms of consideration to any attorney, law firm,
4 medical provider, chiropractor, physical therapist, or any of
5 their employees for referring a consumer to a litigation
6 financier;

7 (2) Accept any commissions, referral fees, rebates, or
8 other forms of consideration from an attorney, law firm,

9 medical provider, chiropractor, physical therapist, or any of
10 their employees;

11 (3) Advertise false or misleading information regarding
12 its products or services;

13 (4) Refer a consumer or potential consumer to a specific
14 attorney, law firm, medical provider, chiropractor, physical
15 therapist, or any of their employees: *Provided*, That if a
16 consumer does not have legal representation, the provider
17 may refer the consumer to a local or state bar referral service
18 operated by a bar association;

19 (5) Fail to promptly supply copies of any and all
20 complete litigation financing contracts to the consumer and
21 the attorney representing the consumer in the dispute;

22 (6) Attempt to obtain in the litigation for which the
23 litigation financing transaction exists a waiver of any
24 remedy, including, but not limited to, compensatory,
25 statutory, or punitive damages, to which the consumer
26 might otherwise be entitled;

27 (7) Attempt to effect in the litigation for which the
28 litigation financing transaction exists mandatory arbitration
29 or otherwise effect waiver of a consumer's right to a trial by
30 jury;

31 (8) Offer or provide legal advice to the consumer
32 regarding the litigation financing or the underlying dispute;

33 (9) Assign, which includes securitizing, a litigation
34 financing contract, in whole or in part, to a third party,
35 however:

36 (A) §46A-6N-4(9) of this code does not prevent a
37 litigation financier that retains responsibility for collecting
38 payment, administering, or otherwise enforcing the
39 litigation financing contract from making an assignment
40 that is:

41 (i) To a wholly owned subsidiary of the litigation
42 financier;

43 (ii) To an affiliate of the litigation financier that is under
44 common control with the litigation financier; or

45 (iii) A grant of a security interest that is made pursuant
46 to §46-9-101 *et seq.* of this code or is otherwise permitted
47 by law; and

48 (B) If an assignment is authorized and made pursuant to
49 §46A-6N-4(9) of this code, for purposes of this section,
50 “litigation financier” includes a successor-in-interest to a
51 litigation financing contract;

52 (10) Report a consumer to a credit reporting agency if
53 insufficient funds remain from the net proceeds to repay the
54 litigation financier; or

55 (11) Receive any right to direct, nor make any decisions
56 with respect to, the conduct of the consumer’s legal claim
57 or any settlement or resolution. The right to make such
58 decisions shall remain solely with the consumer and his or
59 her attorney.

60 (b) An attorney or law firm retained by a consumer shall
61 not have a financial interest in a company offering litigation
62 financing to consumers and shall not receive a referral fee
63 or other consideration from the company, its employees, or
64 its affiliates.

65 (c) A personal injury attorney or law firm, practicing in
66 the state of West Virginia, retained by a consumer shall not
67 have a financial interest in a company offering litigation
68 financing to consumers and shall not receive a referral fee
69 or other consideration from the company, its employees, or
70 its affiliates.

§46A-6N-5. Litigation financing contracts; disclosures.

1 (a) A litigation financing contract shall contain the
2 disclosures specified in this section, which shall constitute
3 material terms of the litigation financing contract.

4 (b) Unless otherwise specified, the disclosures shall be
5 typed in at least 14-point, bold font and be placed clearly
6 and conspicuously within the litigation financing contract,
7 as follows:

8 (1) Each contract shall include consumer disclosures on
9 the first two pages, to the extent possible. The consumer
10 disclosures shall include:

11 (A) Notification that some or all of the funded amount
12 may be taxable;

13 (B) A description of the consumer's right of rescission;

14 (C) The total funded amount provided to the consumer
15 under the contract;

16 (D) An itemization of charges;

17 (E) The total amount due from the consumer, in six-
18 month intervals for 42 months, including all charges and
19 fees;

20 (F) A statement that there are no charges or fees to be
21 paid by the consumer other than what is disclosed on the
22 disclosure form;

23 (G) In the event the consumer seeks more than one
24 litigation financing contract, a disclosure providing the
25 cumulative amount due from the consumer for all
26 transactions, including charges under all contracts, if
27 repayment is made any time after the contracts are executed;

28 (H) A statement that if there is no recovery of any
29 money from the consumer's legal claim, the consumer shall
30 owe nothing to the litigation financier;

31 (I) A statement that if the net proceeds of the claim are
32 insufficient to repay the consumer's indebtedness to the
33 litigation financier, the litigation financier shall accept a

34 reduced sum as full payment of its funded amount and
35 charges; and

36 (J) The following:

37 Consumer's Right to Cancellation: You may cancel this
38 contract without penalty or further obligation within five (5)
39 business days from the date you signed this contract or
40 received financing from [insert name of the litigation
41 financier] by: returning the funds to [insert name, office
42 address, and office hours of the litigation financier] or by U.
43 S. mail [insert name and mailing address of litigation
44 financier]. For purposes of the return deadline by U. S. mail,
45 the postmark date on the returned funds or, if mailed by
46 registered or certified mail, the date of the return receipt
47 requested shall be considered the date of return.

48 (2) Within the body of the litigation financing contract,
49 the following:

50 The litigation financier agrees that it has no right to and
51 will not make any decisions about the conduct of your
52 lawsuit or dispute and that the right to make those decisions
53 remains solely with you and your attorney;

54 (3) Within the body of the litigation financing contract,
55 in all capital letters contained within a box, the following:

56 THE FUNDED AMOUNT AND AGREED-TO
57 CHARGES SHALL BE PAID ONLY FROM THE
58 PROCEEDS OF YOUR LEGAL CLAIM AND SHALL BE
59 PAID ONLY TO THE EXTENT THAT THERE ARE
60 AVAILABLE PROCEEDS FROM YOUR LEGAL
61 CLAIM. YOU WILL NOT OWE (INSERT NAME OF
62 THE LITIGATION FINANCIER) ANYTHING IF THERE
63 ARE NO PROCEEDS FROM YOUR LEGAL CLAIM,
64 UNLESS YOU HAVE VIOLATED ANY MATERIAL
65 TERM OF THIS CONTRACT OR YOU HAVE
66 COMMITTED FRAUD AGAINST THE LITIGATION
67 FINANCIER;

68 (4) Located immediately above the place on the
69 litigation financing contract where the consumer's signature
70 is required, the following:

71 DO NOT SIGN THIS CONTRACT BEFORE YOU
72 READ IT COMPLETELY. IF THIS CONTRACT
73 CONTAINS ANY INCOMPLETE SECTIONS, YOU ARE
74 ENTITLED TO A COMPLETELY FILLED-IN COPY OF
75 THE CONTRACT PRIOR TO SIGNING IT. BEFORE
76 YOU SIGN THIS CONTRACT, YOU SHOULD OBTAIN
77 THE ADVICE OF AN ATTORNEY. DEPENDING ON
78 THE CIRCUMSTANCES YOU MAY WANT TO
79 CONSULT A TAX ADVISOR, A FINANCIAL
80 PROFESSIONAL, OR AN ACCOUNTANT.

§46A-6N-6. Third-party agreements.

1 Except as otherwise stipulated or ordered by the court,
2 a party shall, without awaiting a discovery request, provide
3 to the other parties any agreement under which any
4 litigation financier, other than an attorney permitted to
5 charge a contingent fee representing a party, has a right to
6 receive compensation that is contingent on and sourced
7 from any proceeds of the civil action, by settlement,
8 judgment, or otherwise.

§46A-6N-7. Violation; enforcement.

1 (a) Any violation of this article shall make the litigation
2 financing contract unenforceable by the litigation financier,
3 the consumer, or any successor-in-interest to the litigation
4 financing contract. The court may, in the event that
5 judgment is awarded to the plaintiff, assess costs of the
6 action, including reasonable attorneys' fees, against the
7 defendant.

8 (b) Nothing in this article shall be construed to limit the
9 exercise of powers or the performance of the duties of the
10 Attorney General, including those provided by the West
11 Virginia Consumer Credit and Protection Act, which the

12 Attorney General is otherwise authorized or required to
13 exercise or perform by law.

§46A-6N-8. Contingency rights; assignments; priority of lien, subrogation interest, or right of reimbursement.

1 (a) The contingent right to receive an amount of the
2 potential proceeds of a legal claim may be assigned by a
3 consumer, and that assignment is valid for the purposes of
4 obtaining litigation financing from a litigation financier.

5 (b) The lien of a litigation financier on a consumer's
6 legal claim has priority over liens that attach and take effect
7 subsequent to the attachment of the litigation financier's
8 lien to the consumer's legal claim, except for the following:

9 (1) Attorney liens, insurance carrier liens, medical
10 provider liens, or liens based upon subrogation interests or
11 rights of reimbursement related to the consumer's legal
12 claim; and

13 (2) Child support, Medicare, tax, or any other statutory
14 or governmental lien.

§46A-6N-9. Fees; terms; incorporation of obligations in agreement.

1 (a) A litigation financier may not charge the consumer
2 an annual fee of more than 18 percent of the original amount
3 of money provided to the consumer for the litigation
4 financing transaction.

5 (b) Litigation financiers shall not charge a consumer the
6 annual fee authorized by §46A-6N-9(a) of this code more
7 than one time each year with regard to any single legal claim
8 regardless of the number of litigation financing transactions
9 that the litigation financier enters into with the consumer
10 with respect to such legal claim.

11 (c) Fees assessed by a litigation financier may
12 compound semiannually but may not compound based on
13 any lesser time period.

14 (d) In calculating the annual percentage fee or rate of
15 return, a litigation financier must include all charges
16 payable directly or indirectly by the consumer, and must
17 compute the rate based only on amounts actually received
18 and retained by the consumer.

19 (e) A litigation financier may not assess fees for any
20 period exceeding 42 months from the date of the contract
21 with the consumer.

22 (f) Litigation financiers shall not enter into an
23 agreement with a consumer that has the effect of
24 incorporating the consumer's obligations to the litigation
25 financier that are contained in the original litigation
26 financing transaction into a subsequent litigation financing
27 transaction.

28 (g) Litigation financiers shall not knowingly provide
29 financing to a consumer who has previously assigned and/or
30 sold a portion of the consumer's right to proceeds from his
31 or her legal claim without first making payment to and/or
32 purchasing a prior unsatisfied litigation financier's entire
33 funded amount and contracted charges unless a lesser
34 amount is otherwise expressly agreed to in writing by the
35 litigation financiers; except multiple litigation financiers
36 may agree to contemporaneously provide financing to a
37 consumer, provided that the consumer and the consumer's
38 attorney consent to the agreement in writing.

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CHAPTER 50

**(Com. Sub. for S. B. 543 - By Senators Blair, Roberts
and Tarr)**

[Passed March 9, 2019; in effect July 1, 2019.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §46A-6-107a, relating to warranties as to sales of motor vehicles; providing that a used motor vehicle may be sold “as is” under certain circumstances; providing certain disclosure requirements for “as is” sales of used motor vehicles; allowing cancellation of an “as is” sale by the end of the dealer’s third business day following the sale if the vehicle has mechanical issues; providing that a consumer shall sign and date the disclosure for an “as is” sale in order for the disclosure to be effective; providing that a merchant disclose in writing certain defects or malfunctions when selling a used motor vehicle “as is”; providing that the merchant provide the consumer a copy of a nationally recognized vehicle history report for the used motor vehicle; and providing that an “as is” sale of a used motor vehicle waives implied warranties but does not waive any express warranties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-107a. Used motor vehicles sold “as is”.

- 1 (a) Notwithstanding the provisions of §46A-6-107 of
- 2 this code, a used motor vehicle may be sold “as is” if:
- 3 (1) The vehicle is inoperable and a total loss;

4 (2) The vehicle has been custom built or modified for
5 show purposes or racing; or

6 (3) The vehicle is the following:

7 (A) Sold for less than \$4,000;

8 (B) Driven more than 100,000 miles at the time sold; or

9 (C) Seven years of age or older as calculated from
10 January 1 of the designated model year of the vehicle.

11 (b) A buyer who purchases a vehicle “as is” that meets
12 the criteria set out in the provisions of §46A-6-107a(a)(3) of
13 this code shall have the right to cancel the sale by the end of
14 the dealer’s third business day following the sale. To cancel
15 the sale, the “as is” vehicle must have a significant
16 mechanical issue or issues that can be reasonably expected
17 to have existed at the time of the sale. Cancellation shall
18 become effective when the buyer returns the “as is” vehicle
19 to the point of sale by the end of the dealer’s third business
20 day following the sale.

21 (c) For the purposes of this section, a used motor vehicle
22 is a “total loss” only if:

23 (1) There is material damage to the vehicle’s frame,
24 unitized structure, or suspension system; and

25 (2) The projected cost of repairing the damage exceeds
26 the market value of the vehicle at the time of the incident
27 causing it to be declared a total loss.

28 (d) If a used motor vehicle is sold “as is” pursuant to this
29 section, a merchant shall satisfy the following disclaimer
30 requirements:

31 (1) A disclaimer must appear on the front page of the
32 contract of sale;

33 (2) The disclaimer shall read as follows:

34

“AS IS”

35 THIS VEHICLE IS SOLD “AS IS”. THIS MEANS
36 THAT YOU WILL LOSE YOUR IMPLIED
37 WARRANTIES. YOU WILL HAVE TO PAY FOR ANY
38 REPAIRS NEEDED AFTER THE SALE. IF WE HAVE
39 MADE ANY PROMISES TO YOU, THE LAW SAYS WE
40 MUST KEEP OUR PROMISES EVEN IF WE SELL “AS
41 IS”. TO PROTECT YOURSELF, ASK US TO PUT ALL
42 PROMISES IN WRITING. YOU MAY HAVE THE
43 RIGHT TO CANCEL THIS SALE BY THE END OF THE
44 DEALER’S THIRD BUSINESS DAY FOLLOWING THE
45 SALE IF THE VEHICLE HAS SIGNIFICANT
46 MECHANICAL ISSUE THAT CAN BE REASONABLY
47 EXPECTED TO HAVE EXISTED AT THE TIME OF
48 THE SALE.

49 (3) The text of the disclaimer must be printed in 12-
50 point boldfaced type, except the heading, which must be in
51 16-point extra boldfaced type;

52 (4) The entire disclaimer must be boxed;

53 (5) The consumer shall sign and date within the box
54 containing the disclaimer prior to the sale;

55 (6) The merchant shall describe in writing any defects
56 or malfunctions, if any, disclosed to the merchant by a
57 previous owner of the used motor vehicle or discoverable
58 by the merchant after an inspection of the used motor
59 vehicle; and

60 (7) The merchant shall provide the consumer a copy of
61 a nationally recognized vehicle history report for the used
62 motor vehicle.

63 (e) An “as is” sale of a used motor vehicle waives
64 implied warranties, but does not waive any express
65 warranties, either oral or written, upon which the consumer
66 relied in entering into the transaction.

67 (f) The provisions of this section do not apply to motor
68 vehicles sold as surplus by a state agency.

69 (g) The provisions of this section only apply to sales
70 directly to consumers.



CHAPTER 51

(Com. Sub. for S. B. 657 - By Senator Sypolt)

[Passed March 7, 2019; in effect ninety days from passage.]

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

AN ACT to amend and reenact §46A-6A-2 of the Code of West Virginia, 1931, as amended, relating to including certain new self-propelled agricultural vehicles in the definition of motor vehicle for the purpose of consumer protections related to express warranties by manufacturers of agricultural vehicles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6A. CONSUMER PROTECTION—NEW MOTOR VEHICLE WARRANTIES.

§46A-6A-2. Definitions.

1 When used in this article, the following words, terms,
2 and phrases shall have the meaning ascribed to them, except
3 where the context indicates a different meaning:

4 (1) “Consumer” means:

5 (A) The purchaser, other than for purposes of resale, of
6 a new motor vehicle used primarily for personal, family, or
7 household purposes, a person to whom the new motor
8 vehicle is transferred for the same purposes during the
9 duration of an express warranty applicable to the motor

10 vehicle, and any other person entitled by the terms of the
11 warranty to enforce the obligations of the warranty; or

12 (B) The purchaser, other than for purposes of resale, of
13 a new vehicle described in paragraph (B), subdivision (4) of
14 this section a person to whom the new vehicle is transferred
15 during the duration of an express warranty applicable to the
16 vehicle, and any other person entitled by the terms of the
17 warranty to enforce the obligations of the warranty;

18 (2) “Manufacturer” means a person engaged in the
19 business of manufacturing, assembling, or distributing
20 motor vehicles, who will, under normal business conditions
21 during the year, manufacture, assemble, or distribute to
22 dealers at least 10 new motor vehicles;

23 (3) “Manufacturer’s express warranty” and “warranty”
24 mean the written warranty of the manufacturer of a new
25 motor vehicle of its condition and fitness for use, including
26 any terms or conditions precedent to the enforcement of
27 obligations under that warranty; and

28 (4) “Motor vehicle” means:

29 (A) Any passenger automobile purchased in this state or
30 registered and titled in this state, including any pickup truck
31 or van registered as a Class A motor vehicle under the
32 provisions of §17A-10-1 *et seq.* of this code, and any self-
33 propelled motor vehicle chassis of a motor home registered
34 as a Class A or Class B motor vehicle under the provisions
35 of §17A-10-1 *et seq.* of this code; or

36 (B) Any self-propelled vehicle designed primarily for,
37 and used in, the occupation or business of farming, with a
38 horsepower unit of 35 or greater.

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CHAPTER 52

(H. B. 3143 - By Delegates Shott, Capito, Nelson and Foster)

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

AN ACT to amend and reenact §46A-4-101 and §46A-4-107 of the Code of West Virginia, 1931, as amended, all relating to requirements for making consumer loans in West Virginia; modifying the authority to make regulated consumer loans; providing that a person must first obtain a license from the Commissioner of Banking authorizing him or her to make regulated consumer loans before engaging in the business of making regulated consumer loans, taking assignments of or undertaking direct collection of payments from or enforcement of rights against consumers arising from regulated consumer loans; providing that the licensing provisions do not pertain to any collection agencies as defined and licensed by the West Virginia Collection Agency Act of 1973; and, adjusting threshold amounts of consumer loans for which certain finance charges can be imposed.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-101. Authority to make loans.

- 1 Unless a person has first obtained a license from the
- 2 commissioner authorizing the person to make regulated
- 3 consumer loans, he or she may not engage in the business
- 4 of:
- 5 (1) Making regulated consumer loans; or

6 (2) Taking assignments of or undertaking direct
7 collection of payments from or enforcement of rights
8 against consumers arising from regulated consumer loans:
9 *Provided*, That the licensing provisions of this act do not
10 pertain to any “collection agency” as defined in, and
11 licensed by, the “Collection Agency Act of 1973” at W. Va.
12 Code §§47-16-1 *et seq.*

§46A-4-107. Loan finance charge for regulated consumer lenders.

1 (1) With respect to a regulated consumer loan, including
2 a revolving loan account, a regulated consumer lender may
3 contract for and receive a loan finance charge not exceeding
4 that permitted by this section.

5 (2) On a loan of \$3,500 or less which is unsecured by
6 real property, the loan finance charge, calculated according
7 to the actuarial method, may not exceed 31 percent per year
8 on the unpaid balance of the principal amount.

9 (3) On a loan greater than \$3,500 but less than or equal
10 to \$15,000, or which is secured by real property, the loan
11 finance charge, calculated according to the actuarial
12 method, may not exceed 27 percent per year on the unpaid
13 balance of the principal amount: *Provided*, That the loan
14 finance charge on any loan greater than \$15,000 may not
15 exceed 18 percent per year on the unpaid balance of the
16 principal amount. Loans made by regulated consumer
17 lenders shall be subject to the restrictions and supervision
18 set forth in this article irrespective of their rate of finance
19 charges.

20 (4) Where the loan is nonrevolving and is greater than
21 \$3,500, the permitted finance charge may include a charge
22 of not more than a total of two percent of the amount
23 financed for any origination fee, points, or investigation fee:
24 *Provided*, That where any loan, revolving or nonrevolving,
25 is secured by real estate, the permitted finance charge may
26 include a charge of not more than a total of five percent of

27 the amount financed for any origination fee, points, or
28 investigation fee. In any loan secured by real estate, the
29 charges may not be imposed again by the same or affiliated
30 lender in any refinancing of that loan made within 24
31 months thereof, unless these earlier charges have been
32 rebated by payment or credit to the consumer under the
33 actuarial method or the total of the earlier and proposed
34 charges does not exceed five percent of the amount
35 financed. Charges permitted under this subsection shall be
36 included in the calculation of the loan finance charge. The
37 financing of the charges is permissible and does not
38 constitute charging interest on interest. In a revolving home
39 equity loan, the amount of the credit line extended is, for
40 purposes of this subsection, the amount financed. Other than
41 herein *Provided*, no points, origination fee, investigation
42 fee, or other similar prepaid finance charges attributable to
43 the lender or its affiliates may be levied. Except as provided
44 for by §46A-3-109 of this code, no additional charges may
45 be made; nor may any charge permitted by this section be
46 assessed unless the loan is made. To the extent that this
47 section overrides the preemption on limiting points and
48 other charges on first lien residential mortgages contained
49 in Section 501 of the United States Depository Institutions
50 Deregulation and Monetary Control Act of 1980, the state
51 law limitations contained in this section shall apply. If the
52 loan is precomputed:

53 (a) The loan finance charge may be calculated on the
54 assumption that all scheduled payments will be made when
55 due; and

56 (b) The effect of prepayment, refinancing, or
57 consolidation is governed by the provisions on rebate upon
58 prepayment, refinancing, or consolidation contained in
59 §46A-3-111 of this code.

60 (5) For the purposes of this section, the term of a loan
61 commences on the date the loan is made. Differences in the
62 lengths of months are disregarded and a day may be counted
63 as one thirtieth of a month. Subject to classifications and

64 differentiations the licensee may reasonably establish, a part
65 of a month in excess of 15 days may be treated as a full
66 month if periods of 15 days or less are disregarded and if
67 that procedure is not consistently used to obtain a greater
68 yield than would otherwise be permitted.

69 (6) With respect to a revolving loan account:

70 (a) A charge may be made by a regulated consumer
71 lender in each monthly billing cycle which is one-twelfth of
72 the maximum annual rates permitted by this section
73 computed on an amount not exceeding the greatest of:

74 (i) The average daily balance of the debt; or

75 (ii) The balance of the debt at the beginning of the first
76 day of the billing cycle, less all payments on and credits to
77 such debt during such billing cycle and excluding all
78 additional borrowings during the billing cycle.

79 For the purpose of this subdivision, a billing cycle is
80 monthly if the billing statement dates are on the same day
81 each month or do not vary by more than four days
82 therefrom.

83 (b) If the billing cycle is not monthly, the maximum loan
84 finance charge which may be made by a regulated consumer
85 lender is that percentage which bears the same relation to an
86 applicable monthly percentage as the number of days in the
87 billing cycle bears to 30.

88 (c) Notwithstanding subdivisions (a) and (b) of this
89 subsection, if there is an unpaid balance on the date as of
90 which the loan finance charge is applied, the licensee may
91 contract for and receive a charge not exceeding 50 cents if
92 the billing cycle is monthly or longer or the pro rata part of
93 50 cents which bears the same relation to 50 cents as the
94 number of days in the billing cycle bears to 30 if the billing
95 cycle is shorter than monthly, but no charge may be made
96 pursuant to this subdivision if the lender has made an annual

97 charge for the same period as permitted by the provisions
98 on additional charges.

99 (7) As an alternative to the loan finance charges allowed
100 by subsections (2) and (4) of this section, a regulated
101 consumer lender may on a loan not secured by real estate of
102 \$3,500 or less contract for and receive interest at a rate of
103 up to 31 percent per year on the unpaid balance of the
104 principal amount, together with a nonrefundable loan
105 processing fee of not more than two percent of the amount
106 financed: *Provided*, That no other finance charges are
107 imposed on the loan. The processing fee permitted under
108 this subsection shall be included in the calculation of the
109 loan finance charge and the financing of the fee shall be
110 permissible and may not constitute charging interest on
111 interest.

112 (8) Notwithstanding any contrary provision in this
113 section, a licensed regulated consumer lender who is the
114 assignee of a nonrevolving consumer loan unsecured by real
115 property located in this state, which loan contract was
116 applied for by the consumer when he or she was in another
117 state, and which was executed and had its proceeds
118 distributed in that other state, may collect, receive, and
119 enforce the loan finance charge and other charges, including
120 late fees, provided in the contract under the laws of the state
121 where executed: *Provided*, That the consumer was not
122 induced by the assignee or its in-state affiliates to apply and
123 obtain the loan from an out-of-state source affiliated with
124 the assignee in an effort to evade the consumer protections
125 afforded by this chapter. Such charges may not be
126 considered to be usurious or in violation of the provisions
127 of this chapter or any other provisions of this code.

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CHAPTER 53

**(Com. Sub. for S. B. 518 - By Senators Maroney,
Plymale, Stollings, Tarr, Woelfel, Takubo and
Swope)**

[Passed March 2, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-4-417, relating to restricting the sale and trade of dextromethorphan; defining terms; setting age limits; and providing for a misdemeanor penalty.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-417. Sale of dextromethorphan.

1 (a) As used in this section, “finished drug
2 product” means a drug legally marketed under the Federal
3 Food, Drug, and Cosmetic Act (21 U.S.C. § 321 *et seq.*) that
4 is in finished dosage form.

5 (b) A person may not knowingly or willfully sell or
6 trade a finished drug product containing any quantity of
7 dextromethorphan to a person under 18 years of age.

8 (c) A person under 18 years of age, unless an
9 emancipated minor, may not purchase a finished drug
10 product containing any quantity of dextromethorphan.

11 (d) A person making a retail sale of a finished drug
12 product containing any quantity of dextromethorphan shall
13 require and obtain proof of age from the purchaser before

14 completing the sale, unless from the purchaser's outward
15 appearance the person making the sale would reasonably
16 presume the purchaser to be at least 25 years of age.

17 (e) This section does not apply to a medication
18 containing dextromethorphan that is sold pursuant to a valid
19 prescription.

20 (f) Any person violating the provisions of this section is
21 guilty of a misdemeanor and shall be fined not less than
22 \$100 nor more than \$250.

CHAPTER 54

(H. B. 2509 - By Delegates Pack, Dean, Wilson and Rohrbach)

[Passed March 6, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §60A-4-403 of the Code of West Virginia, 1931, as amended, relating to creating the felony offense of a theft of a controlled substance; and establishing penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-403. Prohibited acts C; penalties.

1 (a) It is unlawful for any person knowingly or
2 intentionally:

3 (1) To distribute as a registrant a controlled substance
4 classified in Schedule I or II, except pursuant to an order
5 form as required by section 307 of this act;

6 (2) To use in the course of the manufacture or
7 distribution of a controlled substance a registration number
8 which is fictitious, suspended, revoked, or issued to another
9 person;

10 (3) To acquire or obtain possession of a controlled
11 substance by misrepresentation, fraud, forgery, theft,
12 deception, or subterfuge;

13 (4) To furnish false or fraudulent material information
14 in, or omit any material information from, any application,
15 report, or other document required to be kept or filed under
16 this act, or any record required to be kept by this act; or

17 (5) To make, distribute, or possess any punch, die, plate,
18 stone, or other thing designed to print, imprint, or reproduce
19 the trademark, trade name, or other identifying mark,
20 imprint, or device of another or any likeness of any of the
21 foregoing upon any drug or container or labeling thereof so
22 as to render the drug a counterfeit substance.

23 (b) Any person who violates this section is guilty of a
24 felony and, upon conviction, may be imprisoned in a
25 correctional facility for not less than one year nor more than
26 four years, or fined not more than \$30,000, or both.



CHAPTER 55

**(Com. Sub. for S. B. 352 - By Senators Weld and
Cline)**

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

AN ACT to amend and reenact §15A-3-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §15A-3-14a, all relating to

the Division of Corrections and Rehabilitation acquiring and disposing of services, goods, and commodities; clarifying notice requirements; allowing the division to require surety; expanding acceptable forms of surety; allowing the division to utilize best value procurement; providing exception; establishing procedure for best value procurement; allowing for direct award procurement; establishing procedure for direct award procurement; allowing the division to run criminal background checks, financial background checks, licensing background checks, and credit checks to determine eligibility for award of contract; enumerating grounds upon which division shall disqualify vendors from being awarded a contract or having contract renewed; limiting disclosure under Freedom of Information Act of records obtained in response to solicitations for bids and records relating to solicitations for, or purchases of, items related to safe and secure running of any facility under jurisdiction of commissioner of division; creating special revenue fund; and providing for methods of disposition of surplus property owned by the division.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.

§15A-3-14. Exempt from Purchasing Division; purchasing procedures.

1 (a) The provisions established in §5A-3-1 *et seq.* of this
2 code do not apply to the division or any institution under the
3 control of the division.

4 (b) When the cost under any contract or agreement
5 entered into by the division, other than compensation for
6 personal services, involves an expenditure of more than
7 \$2,500 and less than \$25,000, the division shall solicit at
8 least three bids, if possible, from vendors and make a written
9 contract, or agreement, with the lowest responsible bidder.
10 When the cost under any contract or agreement entered into
11 by the division, other than compensation for personal

12 services, involves an expenditure of \$25,000 or more, the
13 division shall make a written contract with the lowest
14 responsive, responsible bidder after public notice is
15 published, which notice shall state the general character of
16 the work and general character of the materials to be
17 furnished, the place where plans and specifications therefor
18 may be examined, and the time and place of receiving bids.
19 The notice may be published by an advertising medium the
20 division deems advisable. The division may also solicit
21 sealed bids by sending requests by mail or electronic
22 transmission to prospective vendors. But a contract for lease
23 of a correctional facility is not subject to the foregoing
24 requirements and the division may enter into the contract for
25 lease pursuant to negotiation upon the terms and conditions
26 and for the period as it finds to be reasonable and proper
27 under the circumstances and in the best interests of proper
28 operation or efficient acquisition or construction of the
29 projects. The division may reject any and all bids. A bond
30 with good and sufficient surety, approved by the division,
31 may be required by the division. The good and sufficient
32 surety may be in the form of a bid bond, performance bond,
33 payment bond, maintenance bond, labor and materials bond,
34 or any other type of surety deemed necessary by the
35 division.

36 (c) The division may use best value procurement to
37 enter into a contract when the commissioner determines in
38 writing that it is advantageous to the state.

39 (1) A solicitation for bids under best value procurement
40 shall be made in the same manner as provided in this
41 section.

42 (2) Best value procurement awards shall be based on
43 criteria set forth in the solicitation and information
44 contained in the proposals submitted in response to the
45 solicitation. Those criteria include, but are not limited to,
46 price and the total cost of acquiring, operating, maintaining,
47 and supporting a commodity or service over its projected
48 lifetime, as well as technical criteria. The technical criteria

49 may include, but are not limited to, the evaluated technical
50 merit of the bidder's bid or proposal, the bidder's past
51 performance, the degree to which a proposal exceeds other
52 proposals in technical merit, the utility of any novel or
53 unrequested items in the proposal, and the evaluated
54 probability of performing the requirements stated in the
55 solicitation on time, with high quality, and in a manner that
56 accomplishes the business objectives set forth in the
57 solicitation.

58 (3) The award must be made to the highest scoring
59 responsive and responsible bidder whose bid is determined,
60 in writing, to be most advantageous to the state, taking into
61 consideration all evaluation factors set forth in the best
62 value solicitation.

63 (4) The division may not use best value procurement to
64 enter into government construction contracts, including, but
65 not limited to, those set forth in §5-22-1 *et seq.* of this code.

66 (d)(1) The division may make a direct award of a
67 contract without competitive bidding if:

68 (A) The commissioner shall make a written
69 determination that the direct award is in the best interest of
70 the state;

71 (B) The division documents in writing that competition
72 is not available because there is no other source for the
73 commodity or service, or that no other source would be
74 willing or able to replace the existing source without a
75 detrimental effect on the division, the existence of a
76 detrimental effect being determined by the commissioner in
77 his or her sole discretion;

78 (C) The division publicly advertises a notice of intent to
79 make a direct award without competition in the state's
80 official bid notification system, as well as any other public
81 advertisement that the division deems appropriate, for no
82 less than 10 business days; and

83 (D) No other vendor expresses an interest in providing
84 the commodity or service in question.

85 (2) If a vendor expresses an interest in providing the
86 commodity or service described in the notice of intent to
87 make a direct award, then the division must convert the
88 direct award to a competitive bid, unless the commissioner
89 determines that the interest expressed by a vendor is
90 unreasonable. The competitive bid may, at the discretion of
91 the commissioner, be either a request for quotation or
92 request for proposal.

93 (3) The notice of intent to make a direct award shall
94 contain the following information:

95 (A) A description of the commodity or service for which
96 a direct award will be made;

97 (B) A time period by which delivery must be made or
98 performance must occur;

99 (C) The price that will be paid for the commodity or
100 service;

101 (D) Any limitations that a competing vendor would
102 need to satisfy;

103 (E) An invitation to all vendors interested in providing
104 the commodity or service to make that interest known; and

105 (F) Contact information for the commissioner or his or
106 her designee, and instructions to submit a statement of
107 interest to the commissioner or his or her designee.

108 (e) The commissioner, or division, shall not award a
109 contract or renew a contract to any vendor or prospective
110 vendor when the vendor or prospective vendor, or a related
111 party to the vendor or prospective vendor, is a debtor and:

112 (1) The debt owed is an amount greater than \$1,000 in
113 the aggregate; or

114 (2) The debtor is in employer default.

115 (f) The division has the authority to run criminal
116 background checks, financial background checks, a
117 licensing check, and a credit check, and any vendor, or any
118 and all principals in a company or corporation, must submit
119 to said checks to be eligible to be awarded a contract for the
120 division. The commissioner, or division, shall not award a
121 contract to a vendor if any of the following are present:

122 (1) Conviction of an offense involving fraud or a felony
123 offense in connection with obtaining or attempting to obtain
124 a public contract or subcontract;

125 (2) Conviction of any federal or state antitrust statute
126 relating to the submission of offers;

127 (3) Conviction of an offense involving embezzlement,
128 theft, forgery, bribery, falsification or destruction of
129 records, making false statements, or receiving stolen
130 property in connection with the performance of a contract;

131 (4) Conviction of a felony offense demonstrating a lack
132 of business integrity or business honesty that affects the
133 present responsibility of the vendor or subcontractor;

134 (5) Default on obligations owed to the state, including,
135 but not limited to, obligations owed to the Workers'
136 Compensation Fund, as defined in §23-2C-1 *et seq.* of this
137 code, and obligations under the West Virginia
138 Unemployment Compensation Act and West Virginia state
139 tax and revenue laws. For purposes of this subsection, a
140 vendor is in default when, after due notice, the vendor fails
141 to submit a required payment, interest thereon, or penalty,
142 and has not entered into a repayment agreement with the
143 appropriate agency of the state or has entered into a
144 repayment agreement but does not remain in compliance
145 with its obligations under the repayment agreement. In the
146 case of a vendor granted protection by order of a federal
147 bankruptcy court or a vendor granted an exemption under

148 any rule of the Bureau of Employment Programs or the
149 Insurance Commission, the commissioner may award a
150 contract: *Provided*, That in no event may the contract be
151 awarded to any vendor who has not paid all current state
152 obligations for at least the four most recent calendar
153 quarters, excluding the current calendar quarter, or with
154 respect to any vendor who is in default on a repayment
155 agreement with an agency of the state;

156 (6) The vendor is not in good standing with a licensing
157 board, in that the vendor is not licensed when licensure is
158 required by the law of this state, or the vendor has been
159 found to be in violation of an applicable licensing law after
160 notice, opportunity to be heard, and other due process
161 required by law;

162 (7) The vendor is an active and knowing participant in
163 dividing or planning procurements to circumvent the
164 \$25,000 threshold requiring a sealed bid or otherwise avoid
165 the use of a sealed bid; or

166 (8) Violation of the terms of public contracts or
167 subcontracts for:

168 (A) Willful failure to substantially perform in
169 accordance with the terms of one or more public contracts;

170 (B) Performance in violation of standards established by
171 law or generally accepted standards of the trade or
172 profession amounting to intentionally deficient or grossly
173 negligent performance on one or more public contracts;

174 (C) Use of substandard materials on one or more public
175 contracts or defects in construction in one or more public
176 construction projects amounting to intentionally deficient or
177 grossly negligent performance, even if discovery of the
178 defect is subsequent to acceptance of a construction project
179 and expiration of any warranty thereunder;

180 (D) A repeated pattern or practice of failure to perform
181 so serious and compelling as to justify disqualification; or

182 (E) Any other cause of a serious and compelling nature
183 amounting to knowing and willful misconduct of the vendor
184 that demonstrates a wanton indifference to the interests of
185 the public and that caused, or that had a substantial
186 likelihood of causing, serious harm to the public.

187 (g) Unless the context clearly requires a different
188 meaning, for the purposes of this section, the term:

189 (1) “Debt” means any assessment, premium, penalty,
190 fine, tax, or other amount of money owed to the state or any
191 of its political subdivisions because of a judgment, fine,
192 permit violation, license assessment, amounts owed to the
193 Workers’ Compensation Fund as defined in §23-2C-1 *et*
194 *seq.* of this code, penalty, or other assessment or surcharge
195 presently delinquent or due and required to be paid to the
196 state or any of its political subdivisions, including any
197 interest or additional penalties accrued thereon;

198 (2) “Debtor” means any individual, corporation,
199 partnership, association, limited liability company, or any
200 other form of business association owing a debt to the state
201 or any of its political subdivisions, and includes any person
202 or entity that is in employer default;

203 (3) “Employer default” means having an outstanding
204 balance or liability to the Old Fund or to the Uninsured
205 Employers’ Fund or being in policy default, as defined in
206 §23-2C-2 of this code, failure to maintain mandatory
207 workers’ compensation coverage, or failure to fully meet its
208 obligations as a workers’ compensation self-insured
209 employer. An employer is not in employer default if it has
210 entered into a repayment agreement with the Insurance
211 Commissioner and remains in compliance with the
212 obligations under the repayment agreement;

213 (4) “Political subdivision” means any county
214 commission; municipality; county board of education; any
215 instrumentality established by a county or municipality; any
216 separate corporation or instrumentality established by one

217 or more counties or municipalities, as permitted by law; or
218 any public body charged by law with the performance of a
219 government function and whose jurisdiction is coextensive
220 with one or more counties or municipalities; and

221 (5) "Related party" means a party, whether an
222 individual, corporation, partnership, association, limited
223 liability company, or any other form of business association
224 or other entity whatever, related to any vendor by blood,
225 marriage, ownership, or contract through which the party
226 has a relationship of ownership or other interest with the
227 vendor so that the party will actually, or by effect, receive
228 or control a portion of the benefit, profit, or other
229 consideration from performance of a vendor contract with
230 the party receiving an amount that meets or exceeds five
231 percent of the total contract amount.

232 (h) The prohibitions of subdivision (5), subsection (f) of
233 this section do not apply where a vendor has contested any
234 tax administered pursuant to chapter 11 of this code, amount
235 owed to the Workers' Compensation Fund as defined in
236 §23-2C-1 *et seq.* of this code, permit fee, or environmental
237 fee or assessment and the matter has not become final, or
238 where the vendor has entered into a payment plan or
239 agreement and the vendor is not in default of any of the
240 provisions of such plan or agreement.

241 (i) The division may disqualify a vendor if award to the
242 vendor would jeopardize the safe, secure, and orderly
243 operations of the division.

244 (j) All bids, contract proposals, or contracts with the
245 state or any of its political subdivisions submitted or
246 approved under the provisions of this code shall include an
247 affidavit that the vendor, prospective vendor, or a related
248 party to the vendor or prospective vendor is not in employer
249 default and does not owe any debt in an amount in excess of
250 \$1,000 or, if a debt is owed, that the provisions of subsection
251 (h) of this section apply.

252 (k) If the division has to make a purchase under
253 emergency conditions, or an emergency situation, that
254 jeopardizes the safe, secure, and orderly operations of the
255 division, as deemed by the commissioner, and approved by
256 the Secretary of the Department of Military Affairs and
257 Public Safety, subsection (b) of this section shall not apply.

258 (l) The commissioner may enter into agreements with
259 medical schools and institutions of higher education in this
260 state to develop standards for appropriate and innovative
261 medical programming and care for inmates: *Provided*, That
262 the division will follow the procedures set forth in
263 subsection (b) of this section for delivery of regular and
264 normal medical care within the facilities.

265 (m) Notwithstanding any other provision of this code to
266 the contrary, any records obtained in response to
267 solicitations for bids from the division shall not be subject
268 to disclosure pursuant to §29B-1-1 *et seq.* of this code, until
269 and unless the time frame for submission of bids has closed:
270 *Provided*, That once bids close, the records may be exempt
271 from disclosure pursuant to §29B-1-4 of this code. Any
272 record relating to any solicitation for, or purchase of, any
273 item related to the safe and secure running of any facility
274 under the jurisdiction of the Commissioner of the Division
275 of Corrections and Rehabilitation is not subject to disclosure
276 pursuant to §29B-1-1 *et seq.* of this code.

**§15A-3-14a. Creation of special fund for surplus property
revenue; disposal of surplus property.**

1 (a) There is hereby created a special revenue fund in the
2 State Treasury known as the Division of Corrections and
3 Rehabilitation Surplus Property Fund. Moneys from this
4 fund shall be used for facility maintenance and repair.

5 (b) The commissioner is hereby authorized to dispose of
6 surplus state property owned by the division in the
7 following manner:

8 (1) Transferring the particular commodities or
9 expendable commodities between departments;

10 (2) Selling the commodities to county commissions,
11 county boards of education, municipalities, public service
12 districts, county building commissions, airport authorities,
13 parks and recreation commissions, nonprofit domestic
14 corporations qualified as tax exempt under Section
15 501(c)(3) of the Internal Revenue Code of 1986, as
16 amended, or volunteer fire departments in this state when
17 the volunteer fire departments have been held exempt from
18 taxation under Section 501(c) of the Internal Revenue Code;

19 (3) Trading in the commodities as a part payment on the
20 purchase of new commodities;

21 (4) Cannibalizing the commodities pursuant to
22 procedures established under subsection (g) of this section;

23 (5) Properly disposing of the commodities as waste;

24 (6) Selling the commodities to the general public at the
25 posted price or to the highest bidder by means of public
26 auctions or sealed bids, after having first advertised the
27 time, terms, and place of the sale as a Class II legal
28 advertisement in compliance with the provisions of §59-3-1
29 *et seq.* of this code. The publication area for the publication
30 is the county in which the sale is to be conducted. The sale
31 may also be advertised in other advertising media that the
32 division considers advisable. The division may sell to the
33 highest bidder or to any one or more of the highest bidders,
34 if there is more than one, or, if the best interest of the state
35 will be served, reject all bids; or

36 (7) Selling the commodities to the highest bidder by
37 means of an internet auction site approved by the division,
38 as set forth in an emergency rule promulgated pursuant to
39 the provisions of §29A-3-15 of this code.

40 (c) Upon the sale to the general public or transfer of
41 commodities or expendable commodities between

42 departments, or upon the sale of commodities or expendable
43 commodities to an eligible organization, the division shall
44 set the price to be paid by the receiving eligible
45 organization, with due consideration given to current
46 market prices.

47 (d) The division may sell expendable, obsolete, or unused
48 motor vehicles owned by the division to an eligible
49 organization, other than volunteer fire departments. In
50 addition, the division may sell expendable, obsolete, or unused
51 motor vehicles owned by the division with a gross weight in
52 excess of 4,000 pounds to an eligible volunteer fire
53 department. The division, with due consideration given to
54 current market prices, shall set the price to be paid by the
55 receiving eligible organization for motor vehicles sold
56 pursuant to this provision: *Provided*, That the sale price of any
57 motor vehicle sold to an eligible organization may not be less
58 than the “average loan” value, as published in the most recent
59 available eastern edition of the National Automobile Dealers
60 Association (NADA) Official Used Car Guide, if the value is
61 available, unless the fair market value of the vehicle is less than
62 the NADA “average loan” value, in which case the vehicle
63 may be sold for less than the “average loan” value. The fair
64 market value shall be based on a thorough inspection of the
65 vehicle by an employee of the division who shall consider the
66 mileage of the vehicle and the condition of the body, engine,
67 and tires as indicators of its fair market value. If no fair market
68 value is available, the division shall set the price to be paid by
69 the receiving eligible organization with due consideration
70 given to current market prices. The duly authorized
71 representative of the eligible organization, for whom the motor
72 vehicle or other similar surplus equipment is purchased or
73 otherwise obtained, shall cause ownership and proper title to
74 the motor vehicle to be vested only in the official name of the
75 authorized governing body for whom the purchase or transfer
76 was made. The ownership or title, or both, shall remain in the
77 possession of that governing body and be nontransferable for
78 a period of not less than one year from the date of the purchase
79 or transfer. Resale or transfer of ownership of the motor

80 vehicle or equipment prior to an elapsed period of one year
81 may be made only by reason of certified unserviceability.

82 (e) The division shall report to the Legislative Auditor,
83 semiannually, all sales of commodities or expendable
84 commodities made during the preceding six months to
85 eligible organizations. The report shall include a description
86 of the commodities sold, the price paid by the eligible
87 organization that received the commodities, and to whom
88 each commodity was sold.

89 (f) The proceeds of the sales or transfers shall be
90 deposited in the State Treasury in the special revenue
91 account created in subsection (a) of this section.

92 (g)(1) For purposes of this section, “cannibalization”
93 means the removal of parts from one commodity to use in
94 the creation or repair of another commodity.

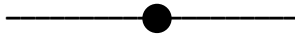
95 (2)(A) If the division intends to cannibalize an asset, the
96 division shall document: (i) The commodity identification
97 number; (ii) the commodity’s acquisition date; (iii) the
98 commodity’s acquisition cost; (iv) a description of the
99 commodity; (v) whether the commodity is operable and, if
100 so, how well it operates; (vi) how the division will dispose
101 of the remaining parts of the commodity; and (vii) who will
102 cannibalize the commodity and how the person is qualified
103 to remove and reinstall the parts.

104 (B) If the division has immediate plans to use the
105 cannibalized parts, the division shall document for the
106 commodity or commodities that will receive the cannibalized
107 part or parts: (i) The commodity identification number; (ii) the
108 commodity’s acquisition date; (iii) the commodity’s
109 acquisition cost; (iv) a description of the commodity; (v)
110 whether the commodity is operable; (vi) whether the part
111 restores the commodity to an operable condition; and (vii) the
112 cost of the parts and labor to restore the commodity to an
113 operable condition without cannibalization.

114 (C) If the division intends to retain the cannibalized
 115 parts for future use, it shall document that said parts have
 116 been retained for future use.

117 (D) The division shall develop procedures for the
 118 disposal of the residual components of cannibalized
 119 property.

120 (3) Whenever the division disposes of a commodity in a
 121 landfill, or by other lawful means of waste disposal, the
 122 division shall notate this on the inventory for the commodity
 123 and shall document the reasons why it was disposed of in
 124 such manner.



CHAPTER 56

**(Com. Sub. for S. B. 373 - By Senators Weld,
 Clements and Maroney)**

[Passed March 5, 2019; in effect ninety days from passage.]
 [Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §15A-4-11 of the Code of West Virginia, 1931, as amended, relating generally to the financial responsibility of inmates; and authorizing the Commissioner of Corrections and Rehabilitation to deduct money from court-ordered obligations, civil judgments, and settlements, including child support, restitution, spousal support, and court costs prior to depositing such moneys in the inmate's account.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. CORRECTIONS MANAGEMENT.

§15A-4-11. Financial responsibility program for inmates.

1 (a) The Legislature finds that:

2 (1) There is an urgent need for vigorous enforcement of
3 child support, restitution, and other court-ordered
4 obligations;

5 (2) The duty of inmates to provide for the needs of
6 dependent children, including their necessary food,
7 clothing, shelter, education, and health care should not be
8 avoided because of where the inmate resides;

9 (3) A person owing a duty of child support who chooses
10 to engage in behaviors that result in the person becoming
11 incarcerated should not be able to avoid child support
12 obligations; and

13 (4) Each sentenced inmate should be encouraged to
14 meet his or her legitimate court-ordered financial
15 obligations.

16 (b) As part of the initial classification process into a
17 correctional facility, the division shall assist each inmate in
18 developing a financial plan for meeting the inmate's child
19 support obligations, if any exist. At subsequent program
20 reviews, the division shall consider the inmate's efforts to
21 fulfill those obligations as indicative of that individual's
22 acceptance and demonstrated level of responsibility.

23 (c)(1) The superintendent shall deduct from the earnings
24 of each inmate all legitimate court-ordered financial
25 obligations. The superintendent shall also deduct child
26 support payments from the earnings of each inmate who has
27 a court-ordered financial obligation. The commissioner
28 shall develop a policy that outlines the formula for the
29 distribution of the offender's income and the formula shall
30 include a percentage deduction, not to exceed 50 percent in
31 the aggregate, for any court-ordered victim restitution, court
32 fees, and child support obligations owed under a support
33 order, including an administrative fee, consistent with the
34 provisions of §48-14-406(c) of this code, to support the
35 division's administration of this financial service;

36 (2) If the inmate worker's income is subject to
37 garnishment for child support enforcement deductions, it
38 shall be calculated on the net wages after taxes, legal
39 financial obligations, and garnishment;

40 (3) The division shall develop the necessary
41 administrative structure to record inmates' wages and keep
42 records of the amount inmates pay for child support; and

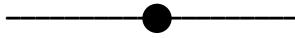
43 (4) Nothing in this section limits the authority of the
44 Bureau for Child Support Enforcement of the Department
45 of Health and Human Resources from taking collection
46 action against an inmate's moneys, assets, or property.

47 (d) If an inmate is awarded a civil judgment, or settles a
48 civil matter, which awards him or her monetary damages,
49 the court in which those damages are awarded or settled
50 shall enter an order which deducts attorney fees and
51 litigation costs owed the inmate's legal counsel and deducts
52 all known outstanding child support, restitution, spousal
53 support, and court costs from the award to the inmate, and
54 satisfies those obligations, prior to releasing any funds to the
55 inmate.

56 (e) Notwithstanding the failure of a court to act in
57 accordance with subsection (d) of this section, the division
58 may honor any outstanding court-ordered obligations of
59 which it is aware, to satisfy all known orders of child
60 support, restitution, spousal support, or court costs and shall
61 deduct from any civil judgment or civil settlement such
62 amounts necessary to pay such obligations of the inmate, if
63 any, arising from orders of child support, restitution, spousal
64 support, or court costs prior to depositing funds from such
65 civil judgment or civil settlement in the inmate's account.
66 The provisions of this subsection shall apply to civil actions
67 filed after July 1, 2019.

68 (f) The accumulation of the total funds, not necessary
69 for current distribution, shall be invested, with the approval
70 of the commissioner or as appropriate, through the West

71 Virginia Municipal Bond Commission, in short-term bonds
72 or treasury certificates or equivalent of the United States.
73 Bonds and certificates so purchased shall remain in the
74 custody of the State Treasurer. The earnings from
75 investments so made shall be reported to the principal
76 officer of each institution, from time to time, as earned, and
77 shall be credited to the respective accounts of the
78 institutions by the West Virginia Municipal Bond
79 Commission. When the earnings are transferred to the
80 respective institutions, they shall be credited by the
81 superintendent to the credit of, and for the benefit of, the
82 inmate, or resident, benefit fund.



CHAPTER 57

(Com. Sub. for S. B. 601 - By Senator Trump)

[Passed March 8, 2019; in effect from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15A-4-17a, relating to mandatory supervision of adult inmates generally; authorizing the Commissioner of the Division of Corrections and Rehabilitation to develop mandatory supervised release plans; authorizing the early release of inmates subject to the conditions of a mandatory supervised release plan; providing for return of inmates to a correctional facility for violations of the conditions of mandatory supervised release plans; providing that inmates on mandatory supervised release are considered to be on parole; clarifying that mandatory supervised release plan is not a commutation of sentence or any other form of clemency; and providing that mandatory supervised release concludes upon completion of the minimum expiration of sentence.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. CORRECTIONS MANAGEMENT.

§15A-4-17a. Division of Corrections and Rehabilitation mandatory supervised release plan.

1 The commissioner may develop a mandatory supervised
2 release plan for an inmate serving a sentence for a felony
3 offense not referenced in §15A-4-17(k) of this code who has
4 not been granted discretionary parole 180 days prior to the
5 inmate's minimum expiration of sentence, which may
6 include electronic monitoring as a condition of release. The
7 inmate may be released and subject to a period of mandatory
8 supervision of 180 days when he or she is 180 days from his
9 or her minimum expiration of sentence.

10 (1) An inmate on mandatory supervised release pursuant
11 to this subsection may be returned by the commissioner to a
12 correctional facility for violation of the conditions of
13 supervision and may not again be eligible for mandatory
14 supervised release during the same period of incarceration.

15 (2) An inmate on mandatory supervised release shall be
16 considered released on parole.

17 (3) Mandatory supervised release is not a commutation
18 of sentence or any other form of clemency.

19 (4) Subject to subdivision (1) of this subsection, the
20 period of mandatory supervised release shall conclude upon
21 completion of the minimum expiration of sentence.



CHAPTER 58

**(Com. Sub. for H. B. 2083 - By Delegates Pushkin,
Shott, Miley, Lovejoy and Miller)**

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17B-2-1c, relating to authorizing the Division of Corrections and Rehabilitation to issue a temporary identification card to an inmate prior to release from custody; providing when temporary identification cards must be issued and for how long such cards are valid; providing that temporary identification cards have the same force and effect as standard identification cards issued by the Division of Motor Vehicles; requiring the Division of Motor Vehicles to accept temporary identification cards as proof of identity, age, and residency; requiring the Division of Motor Vehicles to contact the Division of Corrections and Rehabilitation to verify the social security number of a person presenting a temporary identification card in certain circumstances and to accept verification as documentation of social security number; requiring the Division of Corrections and Rehabilitation to develop a policy and obtain necessary authorizations for sharing social security numbers of released inmates with the Division of Motor Vehicles for limited purposes; providing limitations on inmate eligibility for temporary identification cards; clarifying that the new section neither permits nor requires issuance of temporary identification cards for federal use, in violation of any standards promulgated pursuant to the federal Real ID Act of 2005; and requiring the Division of Corrections and Rehabilitation to make efforts, during the six months preceding an inmate's release, to assist an inmate in obtaining certain personal identification documents.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION,
AND RENEWAL.**

§17B-2-1c. Temporary identification card for released inmates.

1 (a) The West Virginia Division of Corrections and
2 Rehabilitation is authorized to issue a temporary
3 identification card to an eligible inmate, no more than seven
4 days prior to the inmate's release from the Division's
5 custody. An identification card issued pursuant to this
6 section shall be valid for 90 days after the date of issuance.

7 (b) A valid identification card issued pursuant to this
8 section shall have the same force and effect as a standard
9 identification card issued by the Division of Motor Vehicles
10 pursuant to §17B-2-1(f) of this code.

11 (c)(1) Notwithstanding any other provision of this code,
12 the Division of Motor Vehicles shall accept a valid
13 identification card issued pursuant to this section as
14 sufficient proof of identity, age, and residency of a person
15 applying for an identification card or driver's license
16 pursuant to §17B-2-1 of this code.

17 (2) If the Division of Motor Vehicles is unable to verify
18 the person's social security number by another means, the
19 Division of Motor Vehicles shall contact the Division of
20 Corrections and Rehabilitation to verify the social security
21 number provided by such person. The Division of Motor
22 Vehicles shall accept verification by the Division of
23 Corrections and Rehabilitation as sufficient documentation
24 of the person's social security number for the purpose of
25 issuing such person an identification card or driver's license
26 pursuant to §17B-2-1 of this code.

27 (3) The Division of Corrections and Rehabilitation, in
28 collaboration with the Division of Motor Vehicles, shall
29 develop a policy to permit the sharing of released inmates'
30 social security numbers for the limited purposes of this
31 section, and shall obtain any necessary written authorization

32 from an inmate prior to the inmate's release from the
33 Division of Corrections and Rehabilitation's custody.

34 (d) An inmate is not eligible to receive an identification
35 card pursuant to this section if the inmate is in possession of
36 a valid West Virginia identification card or driver's license,
37 which expires more than seven days after the inmate's date
38 of release from the Division of Corrections and
39 Rehabilitation's custody, or if the inmate is not a citizen of
40 the United States.

41 (e) Nothing in this section shall be construed to permit
42 or require issuance of an identification card or driver's
43 license for federal use, in violation of the standards
44 promulgated pursuant to the REAL ID Act of 2005, 49
45 U.S.C. § 30301 *et seq.*

46 (f) During the six months preceding an inmate's release
47 date from the Division of Corrections and Rehabilitation's
48 custody, the division shall make efforts to assist the inmate
49 to obtain a certified copy of the inmate's birth certificate, a
50 Social Security card, and a state-issued driver's license or
51 identification card.

CHAPTER 59

**(H. B. 2462 - By Delegates Hollen, Canestraro, D.
Kelly, Foster, Fast, Harshbarger and Mandt)**

[Passed February 11, 2019; in effect ninety days from passage.]
[Approved by the Governor on February 19, 2019.]

AN ACT to amend and reenact §15A-3-10 of the Code of West Virginia, 1931, as amended, relating to authorizing the carrying of firearms by correctional employees; providing that after successful completion of designated firearms training, the commissioner may issue a certificate to carry division-

issued firearms to correctional employees; establishing that authorized correctional employees may carry division-issued firearms during performance of official duties and when traveling to and from work; establishing the commissioner's firearm training program must be equivalent to the firearms training requirements for deputy sheriffs; requiring that the correctional employee must successfully complete an annual designated firearms course as established by the law enforcement professional standards program to maintain the certificate; and providing the certificate bearing the commissioner's signature shall be in a form prescribed by the commissioner.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.

§15A-3-10. Law-enforcement powers of employees; authority to carry firearms.

1 (a) Other than as outlined in this section, a correctional
2 officer employed by the division is not a law-enforcement
3 officer as that term is defined in §30-29-1 of this code.

4 (b) The commissioner is a law-enforcement official, and
5 has the authority to use, and permit and allow or disallow
6 his or her designated employees to use, publicly provided
7 carriage to travel from their residences to their workplace
8 and return: *Provided*, That the usage is subject to the
9 supervision of the commissioner and is directly connected
10 with and required by the nature and in the performance of
11 the official's or designated employee's duties and
12 responsibilities.

13 (c) All employees of the division are responsible for
14 enforcing rules and laws necessary for the control and
15 management of correctional units and the maintenance of
16 public safety that is within the scope of responsibilities of
17 the division.

18 (d) Persons employed by the Division of Corrections
19 and Rehabilitation as correctional officers are authorized
20 and empowered to make arrests of persons already charged
21 with a violation of law who surrender themselves to the
22 correctional officer, to arrest persons already in the custody
23 of the division for violations of law occurring in the officer's
24 presence, to detain persons for violations of state law
25 committed on the property of any facility under the
26 jurisdiction of the commissioner, and to conduct
27 investigations, pursue, and apprehend escapees from the
28 custody of a facility of the division.

29 (e) The commissioner may designate correctional
30 employees as correctional peace officers who have the
31 authority:

32 (1) To detain persons for violations of state law
33 committed on the property of any state correctional
34 institution;

35 (2) To conduct investigations regarding criminal
36 activity occurring within a correctional facility;

37 (3) To execute criminal process or other process in
38 furtherance of these duties; and

39 (4) To apply for, obtain, and execute search warrants
40 necessary for the completion of his or her duties and
41 responsibilities.

42 (f) The Corrections Special Operations Team is
43 continued and consists of the Corrections Emergency
44 Response Team, the K9 unit, and the Crisis Negotiations
45 team created under the former Division of Corrections. The
46 Corrections Special Operations Team serves as the first
47 responder necessary for the protection of life, liberty, and
48 property. It has limited law-enforcement authority regarding
49 matters occurring at jails, correctional centers, and juvenile
50 centers, and arrest powers to apprehend escapees,

51 absconders, and in all matters arising on the grounds of a
52 facility under the care and control of the commissioner:
53 *Provided*, That at any time the Corrections Special
54 Operations Team is apprehending an escapee or an
55 absconder outside the confinement of the facility grounds,
56 it does so with the assistance and cooperation of local law
57 enforcement or the West Virginia State Police.

58 (g) Notwithstanding any provision of this code to the
59 contrary, the commissioner may issue a certificate
60 authorizing any correctional employee who has successfully
61 completed the division's training program for firearms
62 certification to carry a firearm in the performance of his or
63 her official duties. The training program shall be approved
64 by the commissioner and be equivalent to the training
65 requirements applicable to deputy sheriffs for the use and
66 handling of firearms. Any correctional employee authorized
67 to do so by the commissioner may carry division-issued
68 firearms while in the performance of his or her official
69 duties, which shall include travel to and from work sites. To
70 maintain certification, a correctional employee must
71 successfully complete an annual firearms qualification
72 course equivalent to that required of certified law-
73 enforcement officers as established by the law enforcement
74 professional standards program. The certificate shall be on
75 a form prescribed by the commissioner and shall bear his or
76 her official signature.



CHAPTER 60

**(Com. Sub. for S. B. 4 - By Senators Weld, Plymale,
Clements, Takubo, Sypolt, Swope, Cline and
Ihlenfeld)**

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

AN ACT to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to municipal home rule; making legislative findings; establishing the Municipal Home Rule Pilot Program as a permanent program identified as the Municipal Home Rule Program; providing for continuation of plans and amendments approved during Municipal Home Rule Pilot Program; providing that any ordinance, act, resolution, rule, or regulation enacted pursuant to the Municipal Home Rule Pilot Program shall continue until repealed; expanding eligibility to participate in home rule to additional municipalities; establishing annual assessment for participants in Municipal Home Rule Program; establishing penalty for failing to timely pay annual assessment; creating special revenue account for Municipal Home Rule Board; authorizing certain expenditures from special revenue fund; providing suspension of annual assessment when certain conditions are met; clarifying the authority of the Municipal Home Rule Board; requiring Municipal Home Rule Board to reject any application or amendment that does not reasonably demonstrate municipality's ability to manage related costs or liabilities; requiring publication of administrative rules of Municipal Home Rule Board on its website and made available to the public in print upon request; clarifying procedures related to submitting amendment to approved plan; requiring certain notice prior to proposing or amending a plan; requiring public hearing and notice of hearing prior to municipality proposing a plan or amendment; amending certain

prohibitions on the powers and duties of municipalities under home rule; providing more specific direction regarding the requirements for municipalities participating in the Municipal Home Rule Program that reinstate or raise business and occupation taxes and its impact on municipal sales tax in certain circumstances; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to laws governing professional licensing or certification of employees; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to laws, rules, or regulations governing enforcement of building codes or fire codes; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to federal laws, regulations, or standards that would affect state's required compliance or jeopardize federal funding; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to laws or rules governing procurement of architectural and engineering services with certain exceptions; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to chapter 17C of the Code of West Virginia, 1931, as amended; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to laws, rules, or regulations governing communication technologies or telecommunication carriers; prohibiting municipalities participating in the Municipal Home Rule Program from enacting any ordinance, act, resolution, rule, or regulation that governs the sale, transfer, possession, use, storage, taxation, registration, licensing, or carrying of firearms, ammunition, or accessories thereof; prohibiting municipalities participating in the Municipal Home Rule Program from enacting any ordinance, act, resolution, rule, or regulation that imposes duties on another governmental entity and providing certain exceptions to that prohibition; prohibiting municipalities from prohibiting or effectively limiting the rental of a property

or regulating the duration, frequency, or location of such rental and providing certain exceptions to that prohibition and limitation; modifying reporting requirements; eliminating automatic termination of the Municipal Home Rule Pilot Program on July 1, 2019; and making technical corrections throughout.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS;
GENERAL PROVISIONS; CONSTRUCTION.**

§8-1-5a. Municipal Home Rule Program.

1 (a) — The Legislature finds and declares that:

2 (1) The initial Municipal Home Rule Pilot Program
3 brought innovative results, including novel municipal ideas
4 that became municipal ordinances which later resulted in
5 new statewide statutes;

6 (2) The initial Municipal Home Rule Pilot Program also
7 brought novel municipal ideas that resulted in court
8 challenges against some of the participating municipalities;

9 (3) The Municipal Home Rule Board was an essential
10 part of the initial Municipal Home Rule Pilot Program, but
11 it lacked some needed powers and duties;

12 (4) Municipalities still face challenges delivering
13 services required by federal and state law or demanded by
14 their constituents;

15 (5) Municipalities are sometimes restrained by state
16 statutes, policies, and rules that challenge their ability to
17 carry out their duties and responsibilities in a cost-effective,
18 efficient, and timely manner;

19 (6) Establishing the Municipal Home Rule Pilot
20 Program as a permanent program is in the public interest;
21 and

22 (7) Increasing the powers and duties of the Municipal
23 Home Rule Board, subject to the limitations set forth herein,
24 will enhance the Municipal Home Rule Program.

25 (b) The Municipal Home Rule Pilot Program is
26 established as a permanent program and shall be identified
27 as the Municipal Home Rule Program. Any plan or
28 amendment to a plan approved by the board during the
29 period of the Municipal Home Rule Pilot Program is
30 continued. Any ordinance, act, resolution, rule, or
31 regulation enacted by a participating municipality under the
32 provisions of this section during the period of the Municipal
33 Home Rule Pilot Program shall continue in full force and
34 effect unless and until repealed: *Provided*, That
35 municipalities that are participants in the Municipal Home
36 Rule Program shall update their ordinances, acts,
37 resolutions, rules, and regulations to comply with any
38 additions or modifications to subsection (i), subsection (j),
39 or subsection (k) of this section.

40 (c) (1) Commencing July 1, 2019, any Class I, Class II,
41 or Class III municipality that is current in payment of all
42 state fees may apply to participate in the Municipal Home
43 Rule Program pursuant to the provisions of this section.
44 Also, commencing July 1, 2019, up to four applications per
45 year from Class IV municipalities may be approved by the
46 board for participation in the Municipal Home Rule
47 Program pursuant to the provisions of this section, provided
48 the Class IV municipality is current in payment of all state
49 fees.

50 (2) The municipalities participating in the Municipal
51 Home Rule Pilot Program on the effective date of the
52 amendment and reenactment of this section are authorized
53 to continue in the Municipal Home Rule Program, subject
54 to the requirements of this section, and may amend current
55 written plans and/or submit new written plans in accordance
56 with the provisions of this section.

57 (3) On July 1, 2019, all municipalities currently
58 participating in the Municipal Home Rule Pilot Program
59 shall pay an annual assessment of \$2,000 for the operation
60 and administration of the Home Rule Board. On July 1 of
61 each year thereafter, all municipalities participating in the
62 Municipal Home Rule Program as of that date shall pay the
63 annual assessment. Any participating municipality that fails
64 to timely remit its assessment when due may be assessed a
65 penalty of an additional \$2,000 by the board.

66 (4) There is created in the office of the State Treasurer
67 a special revenue account fund to be known as the Home
68 Rule Board Operations Fund. The assessments required by
69 the provisions of subdivision (3) of this subsection shall be
70 deposited into the fund, and expenditures from the fund
71 shall be made in accordance with appropriation of the
72 Legislature under the provisions of §12-3-1 *et seq.* of this
73 code, and in compliance with the provisions of §11B-2-1 *et*
74 *seq.* of this code: *Provided*, That legislative appropriation is
75 not required during fiscal year 2019.

76 (5) Any balance in the fund created under subdivision
77 (4) of this subsection at the end of a fiscal year shall not
78 revert to the General Revenue Fund but shall remain in the
79 special revenue account for uses consistent with the
80 provisions of this section.

81 (6) All costs and expenses lawfully incurred by the
82 board may be paid from the fund created under subdivision
83 (4) of this subsection.

84 (7) Notwithstanding any provision of this section to the
85 contrary, if at the end of a fiscal year the unencumbered
86 balance of the fund created in subdivision (4) of this
87 subsection is \$200,000 or more, then annual assessments
88 shall be suspended until the board determines that the
89 unencumbered balance in the fund is insufficient to meet
90 operational expenses. The board shall notify all
91 participating municipalities of the suspension of the annual
92 assessment prior to the end of the fiscal year and provide an

93 estimate of when payment of annual assessments will
94 resume.

95 (d) The Municipal Home Rule Board is continued. The
96 Municipal Home Rule Board shall consist of the following
97 five voting members:

98 (1) The Governor, or a designee, who shall serve as
99 chair;

100 (2) The Executive Director of the West Virginia
101 Development Office, or a designee;

102 (3) One member representing the Business and Industry
103 Council, appointed by the Governor with the advice and
104 consent of the Senate;

105 (4) One member representing the largest labor
106 organization in the state, appointed by the Governor with
107 the advice and consent of the Senate; and

108 (5) One member representing the West Virginia Chapter
109 of the American Planning Association, appointed by the
110 Governor with the advice and consent of the Senate.

111 The Chair of the Senate Committee on Government
112 Organization and the Chair of the House Committee on
113 Government Organization shall serve as ex officio
114 nonvoting members of the board.

115 (e) The Municipal Home Rule Board shall:

116 (1) Review, evaluate, make recommendations, and
117 approve or reject, for any lawful reason, by a majority vote
118 of the board, each aspect of the written plan, or the written
119 plan in its entirety, submitted by a municipality;

120 (2) By a majority vote of the board, select, based on the
121 municipality's written plan, new Class I, Class II, Class III,
122 and/or Class IV municipalities to participate in the
123 Municipal Home Rule Program;

124 (3) Review, evaluate, make recommendations, and
125 approve or reject, for any lawful reason, by a majority vote
126 of the board, the amendments to the existing approved
127 written plans submitted by municipalities: *Provided*, That
128 any new application or amendment that does not reasonably
129 demonstrate the municipality's ability to manage its
130 associated costs or liabilities shall be rejected;

131 (4) Consult with any agency affected by the written
132 plans or the amendments to the existing approved written
133 plans; and

134 (5) Perform any other powers or duties necessary to
135 effectuate the provisions of this section: *Provided*, That any
136 administrative rules established by the board for the
137 operation of the Municipal Home Rule Program shall be
138 published on the Municipal Home Rule Board's website,
139 and made available to the public in print upon request.

140 (f) Any Class I, Class II, Class III, or Class IV
141 municipality desiring to participate in the Municipal Home
142 Rule Program, or any municipality desiring to amend its
143 existing approved written plan, shall submit a written plan
144 to the board stating in detail the following:

145 (1) The specific laws, acts, resolutions, policies, rules,
146 or regulations which prevent the municipality from carrying
147 out its duties in the most cost-efficient, effective, and timely
148 manner;

149 (2) The problems created by those laws, acts,
150 resolutions, policies, rules, or regulations;

151 (3) The proposed solutions to the problems, including
152 all proposed changes to ordinances, acts, resolutions, rules,
153 and regulations: *Provided*, That the specific municipal
154 ordinance instituting the solution does not have to be
155 included in the written plan; and

156 (4) A written opinion, by an attorney licensed to practice
157 in the State of West Virginia, stating that the proposed
158 written plan does not violate the provisions of this section.

159 (g) Prior to submitting its written plan, or an amendment
160 to an existing approved written plan, to the board, the
161 municipality shall:

162 (1) Hold a public hearing on the written plan or the
163 amendment to the existing approved written plan;

164 (2) Provide notice of the public hearing at least 30 days
165 prior to the public hearing by a Class II legal advertisement:
166 *Provided*, That on or before the first day of publication, the
167 municipality shall send a copy of the notice by certified mail
168 to the Municipal Home Rule Board and the cabinet secretary
169 of every state department;

170 (3) Make a copy of the written plan or amendment
171 available for public inspection at least 30 days prior to the
172 public hearing; and

173 (4) After the public hearing, adopt an ordinance
174 authorizing the municipality to submit a written plan or
175 amendment to the Municipal Home Rule Board: *Provided*,
176 That the proposed ordinance has been read two times, as
177 required by §8-11-4 of this code.

178 (h) By a majority vote, the Municipal Home Rule Board
179 may select from the municipalities that submitted written
180 plans and were approved by the board by majority vote new
181 Class I, Class II, Class III, and/or Class IV municipalities to
182 participate in the Municipal Home Rule Program.

183 (i) The municipalities participating in the Municipal
184 Home Rule Program may not pass an ordinance, act,
185 resolution, rule, or regulation, under the provisions of this
186 section, that is contrary to the following:

187 (1) Environmental law;

- 188 (2) Laws governing bidding on government construction
189 and other contracts;
- 190 (3) The Freedom of Information Act;
- 191 (4) The Open Governmental Proceedings Act;
- 192 (5) Laws governing wages for construction of public
193 improvements;
- 194 (6) The provisions of this section;
- 195 (7) The provisions of §8-12-5a of this code;
- 196 (8) The municipality's written plan;
- 197 (9) The Constitution of the United States or the Constitution
198 of the State of West Virginia;
- 199 (10) Federal law, including those governing crimes and
200 punishment;
- 201 (11) Chapters 60A, 61, and 62 of this code or any other
202 provisions of this code governing state crimes and
203 punishment;
- 204 (12) Laws governing pensions or retirement plans;
- 205 (13) Laws governing annexation;
- 206 (14) Laws governing taxation: *Provided*, That a
207 participating municipality may enact a municipal sales tax
208 up to one percent if it reduces or eliminates its municipal
209 business and occupation tax: *Provided, however*, That if a
210 municipality subsequently reinstates or raises the municipal
211 business and occupation tax it previously reduced or
212 eliminated under the Municipal Home Rule Pilot Program
213 or the Municipal Home Rule Program, it shall reduce or
214 eliminate the municipal sales tax enacted under the
215 Municipal Home Rule Pilot Program or the Municipal
216 Home Rule Program in an amount comparable to the
217 revenue estimated to be generated by the reinstated tax:

218 *Provided further*, That any municipality that imposes a
219 municipal sales tax pursuant to this section shall use the
220 services of the Tax Commissioner to administer, enforce,
221 and collect the tax required by the provisions of §11-15-1 *et*
222 *seq.*, §11-15A-1 *et seq.*, and §11-15B-1 *et seq.* of this code
223 and all applicable provisions of the Streamlined Sales and
224 Use Tax Agreement: *And provided further*, That the tax
225 does not apply to the sale of motor fuel or motor vehicles;

226 (15) Laws governing tax increment financing;

227 (16) Laws governing extraction of natural resources;

228 (17) Marriage and divorce laws;

229 (18) Laws governing professional licensing or certification,
230 including the administration and oversight of those laws, by
231 state agencies to the extent required by law;

232 (19) Laws, rules, or regulations governing the enforcement
233 of state building or fire codes;

234 (20) Federal laws, regulations, or standards that would
235 affect the state's required compliance or jeopardize federal
236 funding;

237 (21) Laws or rules governing procurement of architectural
238 and engineering services: *Provided*, That notwithstanding any
239 other provision of this section to the contrary, the change made
240 in this subdivision applies prospectively and any ordinance
241 enacted by the participating municipalities prior to the effective
242 date of the amendments to this section during the 2019 regular
243 legislative session and pursuant to the Municipal Home Rule
244 Pilot Program remains in effect.

245 (22) The provisions of chapter 17C of this code; or

246 (23) Laws, rules, or regulations governing communication
247 technologies or telecommunications carriers, as the term
248 "telecommunications carrier" is defined by the Federal
249 Communications Commission in 47 U.S.C. §153 or as

250 determined by the Public Service Commission of West
251 Virginia.

252 (24) Laws governing the sale, transfer, possession, use,
253 storage, taxation, registration, licensing, or carrying
254 firearms, ammunition, or accessories thereof.

255 (j) The municipalities participating in the Municipal
256 Home Rule Program may not pass an ordinance, act,
257 resolution, rule, or regulation under the provisions of this
258 section that:

259 (1) Affects persons or property outside the boundaries
260 of the municipality: *Provided*, That this prohibition under
261 the Municipal Home Rule Program does not limit a
262 municipality's powers outside its boundary lines to the
263 extent permitted under other provisions of this section, other
264 sections of this chapter, other chapters of this code, or court
265 decisions;

266 (2) Enacts an occupation tax, fee, or assessment payable
267 by a nonresident of a municipality; or

268 (3) Imposes duties on another governmental entity,
269 unless the performance of the duties is part of a legally
270 executed agreement between the municipality and the other
271 governmental entity, or is otherwise permitted by state law;

272 (k) Municipalities may not prohibit or effectively limit
273 the rental of a property, in whole or in part, or regulate the
274 duration, frequency, or location of such rental, in whole or
275 in part. A municipality may regulate activities that arise
276 when a property is used as a rental: *Provided*, That such
277 regulation applies uniformly to all properties, without
278 regard to whether such properties are used as a rental:
279 *Provided, however*, That nothing in this subdivision may be
280 construed to prohibit a municipality from imposing a hotel
281 occupancy tax as prescribed in §7-18-1 *et seq.* of this code.

282 (l) A municipality participating in the Municipal Home
283 Rule Program may amend its written plan at any time
284 subject to the requirements of this section.

285 (m) A municipality participating in the Municipal Home
286 Rule Program may amend any ordinance, act, resolution,
287 rule, or regulation enacted pursuant to the municipality's
288 approved written plan at any time as long as the amendment
289 is consistent with the municipality's approved written plan,
290 as modified by any amendments adopted pursuant to this
291 section, complies with the provisions of this section, and the
292 municipality complies with all applicable state law
293 procedures for enacting municipal legislation.

294 (n) On or before December 1 of each year, each
295 participating municipality shall give a written progress
296 report to the Municipal Home Rule Board, and on or before
297 January 1 of each year, the Municipal Home Rule Board
298 shall give a summary report of all the participating
299 municipalities to the Joint Committee on Government and
300 Finance.

301 (o) Notwithstanding any other provision of this code to
302 the contrary, a distributee under the provisions of this
303 section may not seek from the Tax Division of the
304 Department of Revenue a refund of revenues or moneys
305 collected by, or remitted to, the Tax Division of the
306 Department of Revenue, nor seek a change in past amounts
307 distributed, or any other retrospective adjustment relating to
308 any amount distributed, to the extent that the moneys in
309 question have been distributed by the Tax Division to
310 another distributee, regardless of whether those
311 distributions were miscalculated, mistaken, erroneous,
312 misdirected, or otherwise inaccurate or incorrect. For
313 purposes of this section, the term "distributee" means any
314 municipality that has enacted a sales and use tax under this
315 section or as otherwise permitted by law that receives or is
316 authorized to receive a specific distribution of revenues or
317 moneys collected by, or remitted to, the Tax Division of the
318 Department of Revenue pursuant to this section.

●

CHAPTER 61

(S. B. 28 - By Senators Blair, Boso and Clements)

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

AN ACT to amend and reenact §7-18-14 of the Code of West Virginia, 1931, as amended, relating generally to the purposes for which expenditures may be made by county commissions and municipalities from a certain portion of the net proceeds of hotel occupancy taxes; removing the limitation on the amount that may be expended for medical care and emergency services; and allowing a new purpose for those expenditures for the support and operation of economic development activities, including site development, facilities, and infrastructure.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. HOTEL OCCUPANCY TAX.

§7-18-14. Proceeds of tax; application of proceeds.

1 (a) *Application of proceeds.* — The net proceeds of the
2 tax collected and remitted to the taxing authority pursuant
3 to this article shall be deposited into the general revenue
4 fund of such municipality or county commission and, after
5 appropriation thereof, shall be expended only as provided in
6 this section.

7 (b) *Required expenditures.* — At least 50 percent of the
8 net revenue receivable during the fiscal year by a county or
9 a municipality pursuant to this article shall be expended in
10 the following manner for the promotion of conventions and
11 tourism:

12 (1) *Municipalities.* — If a convention and visitor’s
13 bureau is located within the municipality, county, or region,
14 the governing body of such municipality shall appropriate
15 the percentage required by this subsection to that bureau. If
16 a convention and visitor’s bureau is not located within such
17 municipality, county or region, then the percentage
18 appropriation required by this subsection shall be
19 appropriated as follows:

20 (A) Any hotel located within such municipality, county,
21 or region may apply to such municipality for an
22 appropriation to such hotel of a portion of the tax authorized
23 by this article and collected by such hotel and remitted to
24 such municipality for uses directly related to the promotion
25 of tourism and travel, including advertising, salaries, travel,
26 office expenses, publications, and similar expenses. The
27 portion of such tax allocable to such hotel shall not exceed
28 75 percent of that portion of such tax collected and remitted
29 by such hotel which is required to be expended pursuant to
30 this subsection: *Provided,* That prior to appropriating any
31 moneys to such hotel, such municipality shall require the
32 submission of, and give approval to, a budget setting forth
33 the proposed uses of such moneys.

34 (B) If there is more than one convention and visitor’s
35 bureau located within a municipality, county, or region, the
36 city council may allocate the tax authorized by this article
37 to one or more of such bureaus in such portion as the city
38 council in its sole discretion determines.

39 (C) The balance of net revenue required to be expended
40 by this subsection shall be appropriated to the regional
41 travel council serving the area in which the municipality is
42 located.

43 (2) *Counties.* — If a convention and visitor’s bureau is
44 located within a county or region, the county commission
45 shall appropriate the percentage required by this subsection
46 to that convention and visitor’s bureau. If a convention and
47 visitor’s bureau is not located within such county or region,

48 then the percentage appropriation required by this
49 subsection shall be appropriated as follows:

50 (A) Any hotel located within such county or region may
51 apply to such county for an appropriation to such hotel of a
52 portion of the tax authorized by this article and collected by
53 such hotel and remitted to such county for uses directly
54 related to the promotion of tourism and travel, including
55 advertising, salaries, travel, office expenses, publications,
56 and similar expenses. The portion of such tax allocable to
57 such hotel shall not exceed 75 percent of that portion of such
58 tax collected and remitted by such hotel which is required
59 to be expended pursuant to this subsection: *Provided*, That
60 prior to appropriating any moneys to such hotel, such
61 county shall require the submission of, and give approval to,
62 a budget setting forth the proposed uses of such moneys.

63 (B) If there is more than one convention and visitor's
64 bureau located within a county or region, the county
65 commission may allocate the tax authorized by this article
66 to one or more of such bureaus in such portion as the county
67 commission in its sole discretion determines.

68 (C) The balance of net revenue required to be expended
69 by this subsection shall be appropriated to the regional
70 travel council serving the area in which the county is
71 located.

72 (3) *Legislative finding.* — The Legislature hereby finds
73 and declares that in order to attract new business and
74 industry to this state and to retain existing business and
75 industry all to provide the citizens of the state with
76 economic security and to advance the business prosperity
77 and economic welfare of this state, it is necessary to enhance
78 recreational and tourism opportunities. Therefore, in order
79 to promote recreation and tourism, the Legislature finds that
80 public financial support should be provided for
81 constructing, equipping, improving, and maintaining
82 projects, agencies, and facilities which promote recreation
83 and tourism. The Legislature also finds that the support of

84 convention and visitor's bureaus, hotels, and regional travel
85 councils is a public purpose for which funds may be
86 expended. Local convention and visitor's bureaus, hotels,
87 and regional travel councils receiving funds under this
88 subsection may expend such funds for the payment of
89 administrative expenses, and for the direct or indirect
90 promotion of conventions and tourism, and for any other
91 uses and purposes authorized by this subsection.

92 (c) *Permissible expenditures.* — After making the
93 appropriation required by §7-18-14(b) of this code, the
94 remaining portion of the net revenues receivable during the
95 fiscal year by such county or municipality, pursuant to this
96 article, may be expended for one or more of the purposes set
97 forth in this subsection, but for no other purpose. The
98 purposes for which expenditures may be made pursuant to
99 this subsection are as follows:

100 (1) The planning, construction, reconstruction,
101 establishment, acquisition, improvement, renovation,
102 extension, enlargement, equipment, maintenance, repair,
103 and operation of publicly owned convention facilities,
104 including, but not limited to, arenas, auditoriums, civic
105 centers, and convention centers;

106 (2) The payment of principal or interest or both on
107 revenue bonds issued to finance such convention facilities;

108 (3) The promotion of conventions;

109 (4) The construction, operation, or maintenance of
110 public parks, tourist information centers, and recreation
111 facilities, including land acquisition;

112 (5) The promotion of the arts;

113 (6) Historic sites;

114 (7) Beautification projects;

115 (8) Passenger air service incentives and subsidies
116 directly related to increasing passenger air service
117 availability to tourism destinations in this state;

118 (9) Medical care and emergency services in any county
119 where:

120 (A) There is an urgent necessity to preserve the delivery
121 of acute medical care and emergency services;

122 (B) There is an increase in need for acute medical care
123 and emergency services directly related to tourism;

124 (C) Recurrent flooding in the county significantly
125 disrupts, on a periodic basis, the delivery of acute medical
126 care and emergency services;

127 (D) There is an inadequate economic base within the
128 county from any source other than tourism to preserve the
129 delivery of acute medical care and emergency services;

130 (E) There is an inadequate economic base directly
131 related to low population in the county, specifically, a
132 population of less than 10,000 persons according to the most
133 recent decennial census taken under the authority of the
134 United States;

135 (F) There is no more than one hospital within the
136 county; and

137 (G) The county commission makes specific findings, by
138 resolution, that all of the foregoing conditions within the
139 county exist;

140 (10) Support and operation of the Hatfield-McCoy
141 Recreation Area by the participating county commissions in
142 the Hatfield-McCoy Regional Recreational Authority; or

143 (11) Support and operation of economic development
144 activities, including site development, facilities and
145 infrastructure in an amount not to exceed \$200,000.

146 (d) *Definitions.* — For purposes of this section, the
147 following terms are defined:

148 (1) *Convention and visitor's bureau and visitor's and*
149 *convention bureau.* — “Convention and visitor’s bureau”
150 and “visitor’s and convention bureau” are interchangeable
151 and either shall mean a nonstock, nonprofit corporation with
152 a full-time staff working exclusively to promote tourism and
153 to attract conventions, conferences, and visitors to the
154 municipality, county, or region in which such convention
155 and visitor’s bureau or visitor’s and convention bureau is
156 located or engaged in business within.

157 (2) *Convention center.* — “Convention center” means a
158 convention facility owned by the state, a county, a
159 municipality, or other public entity or instrumentality and
160 shall include all facilities, including armories, commercial,
161 office, community service, and parking facilities and
162 publicly owned facilities constructed or used for the
163 accommodation and entertainment of tourists and visitors,
164 constructed in conjunction with the convention center and
165 forming reasonable appurtenances thereto.

166 (3) *Fiscal year.* — “Fiscal year” means the year
167 beginning July 1 and ending June 30 of the next calendar
168 year.

169 (4) *Net proceeds.* — “Net proceeds” means the gross
170 amount of tax collections less the amount of tax lawfully
171 refunded.

172 (5) *Promotion of the arts.* — “Promotion of the arts”
173 means activity to promote public appreciation and interest
174 in one or more of the arts. It includes the promotion of music
175 for all types, the dramatic arts, dancing, painting, and the
176 creative arts through shows, exhibits, festivals, concerts,
177 musicals, and plays.

178 (6) *Recreational facilities.* — “Recreational facilities”
179 means and includes any public park, parkway, playground,

180 public recreation center, athletic field, sports arena, stadium,
181 skating rink or arena, golf course, tennis courts, and other
182 park and recreation facilities, whether of a like or different
183 nature, that are owned by a county or municipality.

184 (7) *Region*. — “Region” means an area consisting of
185 one or more counties that have agreed by contract to fund
186 a convention and visitor’s bureau to promote those
187 counties.

188 (8) *Regional travel council*. — “Regional travel
189 council” means a nonstock, nonprofit corporation, with a
190 full-time staff working exclusively to promote tourism
191 and to attract conventions, conferences, and visitors to the
192 region of this state served by the regional travel council.

193 (9) *Historic site*. — “Historic site” means any site listed
194 on the United States National Register of Historic Places, or
195 listed by a local historical landmarks commission,
196 established under state law, when such sites are owned by a
197 city, a county, or a nonprofit historical association and are
198 open, from time to time, to accommodate visitors.

199 (e) Any member of a governing body who willingly and
200 knowingly votes to or causes to be expended moneys
201 generated by the provisions of this section for purposes
202 other than specifically set forth in this section is guilty of a
203 misdemeanor and, upon conviction thereof, shall be fined
204 not more than \$100.

CHAPTER 62

**(Com. Sub. for S. B. 316 - By Senators Plymale,
Woelfel, Lindsay, Stollings and Hamilton)**

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

AN ACT to amend and reenact §8-22-27a of the Code of West Virginia, 1931, as amended, relating to the corrections of overpayments made to retirants or beneficiaries of retirants; authorizing municipalities to continue certain overpayments; and authorizing a municipality to appoint additional members to a firemen's or a policemen's pension and relief fund board.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY;
POLICEMEN'S PENSION AND RELIEF FUND;
FIREMEN'S PENSION AND RELIEF FUND; PENSION
PLANS FOR EMPLOYEES OF WATERWORKS
SYSTEM, SEWERAGE SYSTEM OR COMBINED
WATERWORKS AND SEWERAGE SYSTEM.**

§8-22-27a. Correction of errors; underpayments; overpayments.

1 (a) *General rule.* — Upon learning of errors, the
2 Municipal Policemen's Pension and Relief Fund Board of
3 Trustees or the Municipal Firemen's Pension and Relief
4 Fund Board of Trustees shall correct errors in the plan in a
5 timely manner whether the individual, municipality, or
6 board of trustees was at fault for the error with the intent of
7 placing the affected individual, municipality, and pension
8 board of trustees in the position each would have been in
9 had the error not occurred. Should the municipal
10 policemen's or firemen's pension and relief fund board of

11 trustees fail to correct discovered errors, the Municipal
12 Pensions Oversight Board shall order the pension fund
13 board of trustees to correct such errors. In the event the
14 Municipal Pensions Oversight Board issues an order
15 pursuant to this section, the governing body of the city may
16 by resolution temporarily appoint up to four additional
17 members to the board of trustees for the purpose of
18 implementing the provisions of the order. The additional
19 board members shall serve until all corrective actions
20 ordered by the Municipal Pensions Oversight Board are
21 completed or until the municipality authorizes continued
22 erroneous payments to retirants or beneficiaries of a retirant
23 as authorized by subsection (d) of this section. Any order
24 issued by the Municipal Pensions Oversight Board shall be
25 enforceable by an action at law.

26 (b) *Underpayments to the plan.* — Any error resulting
27 in an underpayment to the plan may be corrected by the
28 member or retirant remitting the required employee
29 contribution or underpayment and the municipality
30 remitting the required municipality contribution or
31 underpayment. The rate of interest applicable to employer
32 error payments in a municipal policemen's or municipal
33 firemen's pension and relief fund shall be the actuarial
34 interest rate assumption as approved by the Municipal
35 Pensions Oversight Board for completing the actuarial
36 valuation for the plan year immediately preceding the first
37 day of the plan year in which the employer error payment is
38 made, compounded per annum. Any accumulating interest
39 owed on the employee and employer contributions or
40 underpayments resulting from an employer error shall be
41 the responsibility of the employer. The employer may remit
42 total payment and the employee reimburse the employer
43 through payroll deduction over a period equivalent to the
44 time period during which the employer error occurred. If the
45 correction of an error involving an underpayment to the plan
46 will result in the plan correcting an erroneous underpayment
47 from the plan, the correction of the underpayment from the
48 plan shall be made only after the board of trustees receives

49 full payment of all required employee and employer
50 contributions or underpayments, including interest.

51 (c) *Overpayments to the plan by an employee.* — When
52 mistaken or excess employee contributions or
53 overpayments have been made to the plan, the municipal
54 policemen’s or municipal firemen’s pension and relief fund
55 board of trustees shall have sole authority for determining
56 the means of return, offset or credit to or for the benefit of
57 the individual making the mistaken or excess employee
58 contribution of the amounts, and may use any means
59 authorized or permitted under the provisions of Section
60 401(a), *et seq.* of the Internal Revenue Code and guidance
61 issued thereunder applicable to governmental plans.
62 Alternatively, in its full and complete discretion, the
63 municipal policemen’s or municipal firemen’s pension and
64 relief fund board of trustees may require the municipality
65 employing the individual to pay the individual the amounts
66 as wages, with the board of trustees crediting the employer
67 with a corresponding amount to offset against its future
68 contributions to the plan. If the municipality has no future
69 liability for municipality contributions to the plan, the board
70 of trustees shall refund said amount directly to the
71 municipality: *Provided,* That the wages paid to the
72 individual shall not be considered compensation for any
73 purposes of this article. Earnings or interest shall not be
74 returned, offset, or credited under any of the means used by
75 the board of trustees for returning employee overpayments.

76 (d) *Overpayments from the plan.* — If any error results
77 in any member, retirant, beneficiary, entity, or other
78 individual receiving from the plan more than he or she
79 would have been entitled to receive had the error not
80 occurred, the board of trustees, after learning of the error,
81 shall correct the error in a timely manner. Unless otherwise
82 authorized by the governing body of the city in which the
83 fund was established as provided herein, if correction of the
84 error occurs after annuity payments to a retirant or
85 beneficiary have commenced, the board of trustees shall

86 prospectively adjust the payment of the benefit to the correct
87 amount. In addition, the member, retirant, beneficiary,
88 entity, or other person who received the overpayment from
89 the plan shall repay the amount of any overpayment to the
90 municipal policemen's pension fund or municipal firemen's
91 pension fund in any manner permitted by the board of
92 trustees of that fund. The governing body of the city in
93 which the overpaying municipal fund is established may, by
94 majority vote, authorize continued overpayment of
95 retirement benefits for any member, retirant, beneficiary,
96 entity, or individual who retired prior to the effective date
97 of this section as enacted during the regular legislative
98 session of 2017: *Provided*, That where the governing body
99 of the city authorizes continued overpayment, it shall also
100 authorize continued payment into the fund in an amount
101 equal to that which it would be responsible to pay under the
102 applicable actuarial method used by the city without
103 reduction to any retirement benefit. Interest shall not
104 accumulate on any corrective payment made to the plan
105 pursuant to this subsection.

106 (e) *Underpayments from the plan.* — If any error results
107 in any member, retirant, beneficiary, entity, or other
108 individual receiving from the plan less than he or she would
109 have been entitled to receive had the error not occurred, the
110 board of trustees, upon learning of the error, shall correct
111 the error in a timely manner. If correction of the error occurs
112 after annuity payments to a retirant or beneficiary have
113 commenced, the board of trustees shall prospectively adjust
114 the payment of the benefit to the correct amount. In addition,
115 the board of trustees shall pay the amount of such
116 underpayment to the member, retirant, beneficiary, or other
117 individual in a lump sum. Interest shall not be paid on any
118 corrective payment made by the municipal policemen's
119 pension fund or municipal firemen's pension fund pursuant
120 to this subsection.

CHAPTER 63

(S. B. 617 - By Senators Azinger, Hamilton, Plymale and Ihlenfeld)

[Passed March 7, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §8-22-19 of the Code of West Virginia, 1931, as amended, relating to method of payment of municipal contributions to municipality's pension trust funds.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY;
POLICEMEN'S PENSION AND RELIEF FUND;
FIREMEN'S PENSION AND RELIEF FUND; PENSION
PLANS FOR EMPLOYEES OF WATERWORKS
SYSTEM, SEWERAGE SYSTEM, OR COMBINED
WATERWORKS AND SEWERAGE SYSTEM.**

§8-22-19. Levy to maintain fund.

1 (a)(1) In order for a municipal policemen's or firemen's
2 pension and relief fund to receive the allocable portion of
3 moneys from the Municipal Pensions Security Fund created
4 in §8-22-18b of this code, the governing body of the
5 municipality shall levy annually and in the manner provided
6 by law for other municipal levies and include within the
7 maximum levy or levies permitted by law and, if necessary,
8 in excess of any charter provision, a tax at such rate as will,
9 after crediting: (A) The amount of the contributions
10 received during the year from the members of the respective
11 paid police department or paid fire department; and (B) the
12 allocable portion of the funds from the Municipal Pensions
13 Security Fund created in §8-22-18b of this code, provide

14 funds equal to the amount necessary to meet the minimum
15 standards for actuarial soundness as provided in §8-22-20
16 of this code. The amount shall be irrevocably contributed,
17 accumulated, and invested as fund assets as described in §8-
18 22-21 and §8-22-22 of this code. One twelfth of each
19 municipality's annual contributions shall be deposited with
20 the municipality's pension trust funds as fund assets on at
21 least a monthly basis and any revenues received from any
22 source by a municipality which are specifically collected for
23 the purpose of allocation for deposit into the policemen's
24 pension and relief fund or firemen's pension and relief fund
25 shall be so deposited within five days of receipt by the
26 municipality. A municipality may prepay its monthly
27 required contributions in increments greater than one-
28 twelfth. Heretofore surplus reserves accumulated before the
29 effective date of this section shall be irrevocably
30 contributed, aggregated, and invested as fund assets
31 described in §8-22-21 and §8-22-22 of this code. Any
32 actuarial deficiency arising under this section and §8-22-20
33 of this code shall not be the obligation of the State of West
34 Virginia.

35 (2) The levies authorized under the provisions of this
36 section, or any part of them, may by the governing body be
37 laid in addition to all other municipal levies and, to that
38 extent, beyond the limit of levy imposed by the charter of
39 the municipality; and the levies shall supersede and if
40 necessary exclude levies for other purposes, where other
41 purposes have not already attained priority, and within the
42 limitations on taxes or tax levies imposed by the constitution
43 and laws.

44 (b) The public corporations are authorized to take by
45 gift, grant, devise, or bequest any money or real or personal
46 property on such terms as to the investment and
47 expenditures thereof as may be fixed by the grantor or
48 determined by the trustees.

49 (c) In addition to all other sums provided for pensions
50 in this section, it is the duty of every municipality in which

51 any fund or funds have been or shall be established to assess
52 and collect from each member of the paid police department
53 or paid fire department or both each month, the sum of seven
54 percent of the actual salary or compensation of such
55 member; and the amount so collected shall become a regular
56 part of the policemen's pension and relief fund, if collected
57 from a policeman, and of the firemen's pension and relief
58 fund, if collected from a fireman: *Provided*, That for
59 members of the funds who are police officers or firefighters
60 newly hired on or after January 1, 2010, the municipality
61 shall assess and collect nine and one-half percent of the
62 actual salary or compensation. Only those funds for which
63 the board of trustees has collected and paid the contributions
64 as herein provided and meeting minimum standards for
65 actuarial soundness shall be eligible to receive moneys from
66 the additional fire and casualty insurance premium tax as
67 provided in §33-3-14d of this code: *Provided, however*,
68 That the board of trustees for each pension and relief fund
69 may assess and collect from each member of the paid police
70 department or paid fire department or both each month not
71 more than an additional two and one-half percent of the
72 actual salary or compensation of each member, but not to
73 exceed nine and one-half percent total contribution:
74 *Provided further*, That if any board of trustees decides to
75 assess and collect any additional amount pursuant to this
76 subdivision above the member contribution required by this
77 section, then that board of trustees may not reduce the
78 additional amount until the respective pension and relief
79 fund no longer has any actuarial deficiency: *And provided*
80 *further*, That if any board of trustees decides to assess and
81 collect any additional amount, any board of trustees
82 decision and any additional amount is not the liability of the
83 State of West Virginia. Member contributions shall be
84 deposited in the pension and relief fund within five days of
85 being collected.

86 (d)(1) For the fiscal year beginning on July 1, 2010, and
87 subject to provisions of §8-22-18b and §33-3-14d of this
88 code and for each fiscal year thereafter, the Municipal

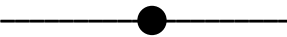
89 Pensions Oversight Board shall receive and retain the
90 moneys allocated to the Municipal Pensions Security Fund
91 until such time as the treasurer of the municipality applies
92 for the allocable portion and certifies in writing to
93 Municipal Pensions Oversight Board that:

94 (A) The municipality has irrevocably contributed the
95 amount required under this section and §8-22-20 of this
96 code to the pension and relief fund for the required period;
97 and

98 (B) The board of trustees of the pension and relief fund
99 has made a report to the governing body of the municipality
100 and to the oversight board on the condition of its fund with
101 respect to the fiscal year.

102 (2) When the aforementioned application and
103 certification are made, the allocable portion of moneys from
104 the Municipal Pensions Security Fund shall be paid to the
105 corresponding policemen's or firemen's pension and relief
106 fund. Payment to a municipal pension and relief fund shall
107 be made by electronic funds transfer.

108 (e) The State Auditor and the oversight board have the
109 power, and the duty as each considers necessary, to perform
110 or review audits on the pension and relief funds or to employ
111 an independent consulting actuary or accountant to
112 determine the compliance of the aforementioned
113 certification with the requirements of this section and §8-
114 22-20 of this code. The expense of the audit or
115 determination shall be paid from the Municipal Pensions
116 Security Fund pursuant to provisions of §8-22-18b of this
117 code. If the allocable portion of the Municipal Pensions
118 Security Fund is not paid to the pension and relief fund
119 within 18 months, the portion is forfeited by the pension and
120 relief fund and is allocable to other eligible municipal
121 policemen's and firemen's pension and relief funds in
122 accordance with §33-3-14d of this code.



CHAPTER 64

**(H. B. 2743 - By Delegates Hollen, Graves, Pethtel,
Evans, Anderson and Malcolm)**

(By Request of the Municipal Pensions Oversight Board)

[Passed March 1, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §8-22-11a of the Code of West Virginia, 1931, as amended, relating to eliminating reference to municipal policemen's pension and relief funds and municipal firemen's pension and relief funds in section restricting investment of municipal pension funds as such investment is restricted elsewhere in the code.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY;
POLICEMEN'S PENSION AND RELIEF FUND;
FIREMEN'S PENSION AND RELIEF FUND; PENSION
PLANS FOR EMPLOYEES OF WATERWORKS
SYSTEM, SEWERAGE SYSTEM OR COMBINED
WATERWORKS AND SEWERAGE SYSTEM.**

§8-22-11a. Restrictions on investment.

1 Moneys invested as permitted by §8-22-11 of this code
2 are subject to the restrictions and conditions contained in
3 this section:

4 (1) At no time may more than 75 percent of the portfolio
5 of either fund be invested in securities described in §8-22-
6 11(7) of this code;

7 (2) At no time may more than 20 percent of the portfolio
8 of either fund be invested in securities described in §8-22-

9 11(7) of this code which mature within one year from the
10 date of issuance thereof;

11 (3) At no time may more than nine percent of the
12 portfolio be invested in securities issued by a single private
13 corporation or association; and

14 (4) At no time may more than 60 percent of the portfolio
15 be invested in equity mutual funds under §8-22-11(10) of
16 this code.



CHAPTER 65

**(H. B. 2827 - By Delegates Sypolt, Phillips, Graves,
Nelson, Pyles and Miller)**

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

AN ACT to amend and reenact §11-2-3 of the Code of West Virginia, 1931, as amended, relating to removing the residency requirements for hiring deputy assessors.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ASSESSORS.

§11-2-3. Selection of deputy assessors.

1 The deputy assessors shall be appointed by the assessor
2 with the advice and consent of the county commission, and
3 may be removed at any time in the discretion of the assessor.
4 Vacancies occurring from any cause in the office of any
5 deputy assessor shall be filled by the assessors.

●

CHAPTER 66

(Com. Sub. for S. B. 100 - By Senator Trump)

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

AN ACT to amend and reenact §30-29-4 of the Code of West Virginia, 1931, as amended, relating to increasing certain fees used to fund certain law-enforcement training and certification and professional development programs and expenses related thereto; increasing a fee added to the usual court costs of all criminal proceedings; and increasing fee added to the amount of any cash or property bond posted for violation of any criminal law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-4. Special revenue account—collections; disbursements; administrative expenses.

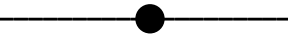
1 (a) A \$12 fee shall be added to the usual court costs of
2 all criminal court proceedings involving violation of any
3 criminal law of the state or any county or municipality of
4 the state, excluding violations of municipal parking
5 ordinances, unless the fee is later modified pursuant to a
6 legislative rule.

7 (b) A \$12 fee shall be added to the amount of any cash
8 or property bond posted for violation of any criminal law of
9 the state or any county or municipality of the state,
10 excluding bonds posted solely for violation of municipal
11 parking ordinances, unless the fee is later modified pursuant

12 to a legislative rule. Upon forfeiture of the bond, the \$12 fee
13 shall be deposited as provided in §30-29-4(c) of this code.

14 (c) All fees collected pursuant to §30-29-4(a) and §30-
15 29-4(b) of this code shall be deposited in a separate account
16 by the collecting agency. Within 10 calendar days following
17 the beginning of each calendar month, the collecting agency
18 shall forward the amount deposited to the State Treasurer.
19 The Treasurer shall deposit all fees received into a special
20 revenue account. The subcommittee shall disburse funds in
21 the account for the funding of law-enforcement entry level
22 training programs, professional development programs, the
23 certification of law-enforcement officers, and to pay
24 expenses of the Governor's Committee on Crime,
25 Delinquency, and Correction, or the subcommittee in
26 administering the provisions of this article. The expenses
27 may not in any fiscal year exceed 15 percent of the funds
28 deposited to the special revenue account during that fiscal
29 year.

30 (d) The fees established by this section may be modified
31 by legislative rule as provided in §30-29-3 of this code.



CHAPTER 67

**(Com. Sub. for S. B. 398 - By Senators Trump,
Takubo, Stollings and Prezioso)**

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

AN ACT to amend and reenact §5-10-48 of the Code of West Virginia, 1931, as amended; to amend and reenact §50-1-6a of said code; and to amend and reenact §51-9-10 of said code, all relating to compensation for senior judicial officers; providing that senior judges, justices, and magistrates may receive per diem

compensation for temporary assignments while receiving retirement benefits, subject to certain limitations; setting forth legislative findings; limiting the per diem rate of compensation that may be paid to senior judges and justices for each day served; providing 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; limiting the per diem rate of compensation that may be paid to senior magistrates for each day served; providing that the combined total of per diem compensation and retirement benefits paid to a senior magistrate during a single calendar year may not exceed the annual salary of a sitting magistrate; providing an exception to the limitation on the combined total of per diem compensation and retirement benefits paid to a senior judge, justice, or magistrate in a calendar year, if the Chief Justice of the Supreme Court of Appeals enters an administrative order certifying that certain circumstances necessitate extended assignment of such judge, justice, or magistrate; providing that extended assignment of senior judges or justices must not be utilized in a manner to threaten the qualified status of the Judges' Retirement System under certain provisions of the Internal Revenue Code; requiring that administrative orders regarding extended assignment of a senior judge, justice, or magistrate be submitted to the State Auditor and the State Treasurer; providing that senior judges, justices, and magistrates may be reimbursed for actual and necessary expenses incurred in the performance of their duties; and requiring the State Treasurer to petition the West Virginia Supreme Court of Appeals for a writ of prohibition prohibiting the State Auditor from issuing warrants to authorize payment of compensation to senior judges and justices above statutory limitations.

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.****§5-10-48. Reemployment after retirement; options for holder
of elected public office.**

1 (a) The Legislature finds that a compelling state interest
2 exists in maintaining an actuarially sound retirement system
3 and that this interest necessitates that certain limitations be
4 placed upon an individual's ability to retire from the system
5 and to then later return to state employment as an employee
6 with a participating public employer while contemporaneously
7 drawing an annuity from the system. The Legislature hereby
8 further finds and declares that the interests of the public are
9 served when persons having retired from public employment
10 are permitted, within certain limitations, to render post-
11 retirement employment in positions of public service, either in
12 elected or appointed capacities. The Legislature further finds
13 and declares that it has the need for qualified employees and
14 that in many cases an employee of the Legislature will retire
15 and be available to return to work for the Legislature as a per
16 diem employee. The Legislature further finds and declares that
17 in many instances these employees have particularly valuable
18 expertise which the Legislature cannot find elsewhere. The
19 Legislature further finds and declares that reemploying these
20 persons on a limited per diem basis after they have retired is
21 not only in the best interests of this state but has no adverse
22 effect whatsoever upon the actuarial soundness of this
23 particular retirement system.

24 (b) For the purposes of this section: (1) "Regularly
25 employed on a full-time basis" means employment of an
26 individual by a participating public employer, in a position
27 other than as an elected or appointed public official, which
28 normally requires 12 months per year service and at least
29 1,040 hours of service per year in that position; (2)
30 "temporary full-time employment" or "temporary part-time
31 employment" means employment of an individual on a
32 temporary or provisional basis by a participating public
33 employer, other than as an elected or appointed public

34 official, in a position which does not otherwise render the
35 individual as regularly employed; (3) “former employee of
36 the Legislature” means any person who has retired from
37 employment with the Legislature and who has at least 10
38 years’ contributing service with the Legislature; and (4)
39 “reemployed by the Legislature” means a former employee
40 of the Legislature who has been reemployed on a per diem
41 basis not to exceed 175 days per calendar year.

42 (c) If a retirant becomes regularly employed on a full-
43 time basis by a participating public employer, payment of
44 his or her annuity shall be suspended during the period of
45 his or her reemployment and he or she shall become a
46 contributing member to the retirement system. If his or her
47 reemployment is for a period of one year or longer, his or
48 her annuity shall be recalculated and he or she shall be
49 granted an increased annuity due to the additional
50 employment, the annuity to be computed according to §5-
51 10-22 of this code. If his or her reemployment is for a period
52 less than one year, he or she may request in writing that the
53 employee and employer retirement contributions submitted
54 during reemployment be credited to the participating public
55 employer pursuant to §5-10-44 of this code, and his or her
56 previous annuity shall be reinstated effective the first day of
57 the month following termination of reemployment and the
58 board’s receipt of written notice thereof. A retirant may
59 accept legislative per diem, temporary full-time, or
60 temporary part-time employment from a participating
61 employer without suspending his or her retirement annuity
62 so long as he or she does not receive annual compensation
63 in excess of \$20,000.

64 (d) *Senior judges, justices, and magistrates.* –

65 (1) Notwithstanding the provisions of subsection (c) of
66 this section, a retired judge or justice who is recalled and
67 assigned to temporary service as a senior judge or justice by
68 the West Virginia Supreme Court of Appeals may receive
69 per diem compensation pursuant to the requirements of §51-

70 9-10 of this code while continuing to receive his or her
71 annuity.

72 (2) Notwithstanding the provisions of subsection (c) of
73 this section, a retired magistrate who is recalled and
74 assigned to temporary service as a senior magistrate by the
75 West Virginia Supreme Court of Appeals may receive per
76 diem compensation pursuant to the requirements of §50-1-
77 6a of this code while continuing to receive his or her
78 annuity.

79 (e) If a member retires and is then subsequently elected
80 to a public office or is subsequently appointed to hold an
81 elected public office, or is a former employee of the
82 Legislature who has been reemployed by the Legislature, he
83 or she has the option, notwithstanding subsection (c) of this
84 section, to either:

85 (1) Continue to receive payment of his or her annuity
86 while holding public office or during any reemployment of
87 a former employee of the Legislature on a per diem basis, in
88 addition to the salary he or she may be entitled to as an
89 office holder or as a per diem reemployed former employee
90 of the Legislature; or

91 (2) Suspend the payment of his or her annuity and
92 become a contributing member of the retirement system as
93 provided in subsection (c) of this section. Notwithstanding
94 the provisions of this subsection, a member who is
95 participating in the system as an elected public official may
96 not retire from his or her elected position and commence to
97 receive an annuity from the system and then be elected or
98 reappointed to the same position unless and until a
99 continuous 12-month period has passed since his or her
100 retirement from the position: *Provided*, That a former
101 employee of the Legislature may not be reemployed by the
102 Legislature on a per diem basis until at least 60 days after
103 the employee has retired: *Provided, however*, That the
104 limitation on compensation provided by subsection (c) of
105 this section does not apply to the reemployed former

106 employee: *Provided further*, That in no event may
107 reemployment by the Legislature of a per diem employee
108 exceed 175 days per calendar year.

109 (f) A member who is participating in the system
110 simultaneously as both a regular, full-time employee of a
111 participating public employer and as an elected or appointed
112 member of the legislative body of the state or any political
113 subdivision may, upon meeting the age and service
114 requirements of this article, elect to retire from his or her
115 regular full-time state employment and may commence to
116 receive an annuity from the system without terminating his
117 or her position as a member of the legislative body of the
118 state or political subdivision: *Provided*, That the retired
119 member shall not, during the term of his or her retirement
120 and continued service as a member of the legislative body
121 of a political subdivision, be eligible to continue his or her
122 participation as a contributing member of the system and
123 shall not continue to accrue any additional service credit or
124 benefits in the system related to the continued service.

125 (g) Notwithstanding the provisions of §5-10-27b of this
126 code, any publicly elected member of the legislative body
127 of any political subdivision or of the State Legislature, the
128 Clerk of the House of Delegates, and the Clerk of the Senate
129 may elect to commence receiving in-service retirement
130 distributions from this system upon attaining the age of 70
131 and one-half years: *Provided*, That the member is eligible to
132 retire under the provisions of §5-10-20 or §5-10-21 of this
133 code: *Provided, however*, That the member elects to stop
134 actively contributing to the system while receiving the in-
135 service distributions.

136 (h) The provisions of §5-10-22h of this code are not
137 applicable to the amendments made to this section during
138 the 2006 regular session.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-6a. Temporary appointment of retired magistrates.

1 (a) The West Virginia Supreme Court of Appeals is
2 authorized and empowered to create a panel of senior
3 magistrates to consist of, and to utilize the talent and
4 experience of, retired magistrates of this state.

5 (b) Senior magistrates recalled and assigned to service
6 shall receive per diem compensation set by the Supreme
7 Court of Appeals, but not to exceed \$200 for each day
8 actually served: *Provided*, That the combined total of per
9 diem compensation and retirement benefits paid to a senior
10 magistrate during a single calendar year may not exceed the
11 annual salary of a sitting magistrate, except as set forth in
12 subsection (c) of this section.

13 (c) Notwithstanding subsection (b) of this section, for
14 purposes of maintaining magisterial efficacy and continuity
15 of magisterial decisionmaking, a senior magistrate may
16 continue to receive per diem compensation after the
17 combined total of per diem compensation and retirement
18 benefits paid to the senior magistrate during that calendar
19 year exceeds the annual salary of a sitting magistrate if the
20 Chief Justice of the Supreme Court of Appeals enters an
21 administrative order certifying there are certain
22 extraordinary circumstances involving the necessary
23 absence of a sitting magistrate because of a protracted, but
24 temporary, illness or medical condition or a lengthy
25 suspension which necessitate the extended assignment of
26 the senior magistrate. Immediately upon entering such an
27 order, the chief justice shall submit copies of the order to the
28 State Auditor and the State Treasurer.

29 (d) In addition to the compensation authorized by this
30 section, senior magistrates recalled to service may be
31 reimbursed for their actual and necessary expenses incurred
32 in the performance of their duties.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-10. Services of senior judges and justices.

1 (a) The Legislature finds that:

2 (1) Section seven, article VIII of the Constitution of
3 West Virginia expressly requires the Legislature to fix
4 judicial salaries by statute, providing that: “[j]ustices,
5 judges and magistrates shall receive the salaries fixed by
6 law”.

7 (2) When originally enacted in 1949, this section of the
8 code required any retired judge receiving retirement
9 benefits to serve as a special judge, when assigned to
10 temporary service, “without charge or compensation, per
11 diem or otherwise to him”.

12 (3) In 1974, the Judicial Reorganization Amendment to
13 the Constitution of West Virginia was ratified. Among other
14 matters, in section eight, article VIII, the amendment
15 addressed the ongoing practice of recalling retired judicial
16 officers to service by empowering the Chief Justice of the
17 Supreme Court of Appeals to recall a retired judge or justice
18 to service, “with his permission and with the approval of the
19 supreme court of appeals”, for temporary assignment.

20 (4) Absent from the Judicial Reorganization
21 Amendment and article VIII of the Constitution of West
22 Virginia is any provision authorizing the Supreme Court of
23 Appeals to fix compensation for recalled judges or justices.
24 Indeed, the Judicial Reorganization Amendment added
25 language to section seven, article VIII of the Constitution of
26 West Virginia, unequivocally stating that “[j]ustices, judges
27 and magistrates shall receive the salaries fixed by law”.

28 (5) In 1975, the Legislature amended and reenacted this
29 section of the code, which still then required any retired
30 judge receiving retirement benefits to serve as a special

31 judge, when assigned to temporary service “without charge
32 or compensation, per diem or otherwise to him”.

33 (6) In 1991, the Legislature amended and reenacted this
34 section of the code again, authorizing and empowering the
35 Supreme Court of Appeals to create a panel of senior judges
36 and justices “to be assigned duties as needed and as feasible
37 toward the objective of reducing caseloads and providing
38 speedier trials to litigants throughout the State”.

39 (7) The 1991 reenactment of this section of the code
40 statutorily authorized, for the first time, “reasonable
41 payment” to senior judges and justices “on a per diem
42 basis”, and provided that “the per diem and retirement
43 compensation of a senior judge shall not exceed the salary
44 of a sitting judge”.

45 (8) In 2018, the West Virginia House of Delegates
46 adopted and communicated Articles of Impeachment to the
47 West Virginia Senate, naming justices of the Supreme Court
48 of Appeals serving at that time as respondents. Several of
49 the articles alleged that certain justices, each while serving
50 as Chief Justice of the Supreme Court of Appeals, had
51 intentionally signed contracts agreeing to pay retired judges
52 recalled to service above the compensation limitations of
53 this section of the code.

54 (9) In a petition to the Supreme Court of Appeals, styled
55 *State ex. rel. Workman v. Carmichael*, one justice named as
56 respondent in the 2018 impeachment proceedings
57 challenged the constitutionality of the Articles of
58 Impeachment in which she was named, including the
59 articles alleging payment of senior judges above the
60 limitations of this section of the code.

61 (10) In ruling on the petition in *State ex. rel. Workman*
62 *v. Carmichael*, the Supreme Court of Appeals, at that time
63 composed of five circuit judges temporarily assigned to sit
64 as justices for that case, issued a writ of prohibition staying
65 impeachment proceedings.

66 (11) In direct contradiction of section seven, article VIII
67 of the Constitution of West Virginia, the decision in *State*
68 *ex. rel. Workman v. Carmichael* held, in part, that this
69 section of the code, providing for and limiting the
70 compensation of senior judges, is “unconstitutional and
71 unenforceable”.

72 (12) The majority opinion in *State ex. rel. Workman v.*
73 *Carmichael* ignored the plain language of section seven,
74 article VIII of the Constitution of West Virginia, which
75 explicitly provides that “[j]ustices, judges and magistrates
76 shall receive the salaries fixed by law”.

77 (13) Syllabus point four of the majority opinion in *State*
78 *ex. rel. Workman v. Carmichael* mischaracterizes what the
79 Legislature had done in enacting this section of the code, by
80 providing that: “West Virginia Code §51-9-10 (1991)
81 violates the Separation of Powers Clause of Article V, § 1
82 of the West Virginia Constitution, insofar as that statute
83 seeks to regulate judicial appointment matters that are
84 regulated exclusively by this Court pursuant to Article VIII,
85 § 3 and § 8 of the West Virginia Constitution. Consequently,
86 W.Va. Code §51-9-10, in its entirety, is unconstitutional and
87 unenforceable”.

88 (14) Occasionally, circumstances may require the
89 extended assignment of senior judges and justices,
90 necessitating the Legislature to prescribe such
91 circumstances when the limitations on compensation of
92 senior judges and justices receiving retirement benefits may
93 be exceeded.

94 (b) The Legislature recognizes and acknowledges the
95 authority of the West Virginia Supreme Court of Appeals to
96 recall retired judges and justices for temporary assignment
97 and to create a panel of senior judges and justices to utilize
98 the talent and experience of former circuit court judges and
99 supreme court justices of this state: *Provided*, That extended
100 assignment of retired judges and justices must not be
101 utilized in such a way as to threaten the qualified status of

102 the Judges' Retirement System under applicable provisions
103 of the Internal Revenue Code, including Treasury
104 Regulation section 1.401(a)-1(b)(1) requiring that a
105 qualified plan must be established primarily to provide
106 payment of definitely determinable benefits to its
107 employees after retirement or attainment of normal
108 retirement age.

109 (c) Senior judges and justices recalled and assigned to
110 service shall receive per diem compensation set by the
111 Supreme Court of Appeals, but not to exceed \$430 for each
112 day actually served: *Provided*, That the combined total of
113 per diem compensation and retirement benefits paid to a
114 senior judge or justice during a single calendar year may not
115 exceed the annual salary of a sitting circuit judge, except as
116 set forth in subsection (d) of this section.

117 (d) Notwithstanding subsection (c) of this section, for
118 purposes of maintaining judicial efficacy and continuity in
119 judicial decisionmaking, a senior judge or justice may
120 continue to receive per diem compensation after the
121 combined total of per diem compensation and retirement
122 benefits paid to the senior judge or justice during that
123 calendar year exceeds the annual salary of a sitting circuit
124 judge if the Chief Justice of the Supreme Court of Appeals
125 enters an administrative order certifying there are certain
126 extraordinary circumstances involving the necessary
127 absence of a sitting judicial officer because of a protracted,
128 but temporary, illness or medical condition or a lengthy
129 suspension which necessitate the extended assignment of
130 the senior judge or justice. Immediately upon entering such
131 an order, the Chief Justice shall submit copies of the order
132 to the State Auditor and the State Treasurer.

133 (e) In addition to the per diem compensation authorized
134 by this section, senior judges and justices recalled to service
135 may be reimbursed for their actual and necessary expenses
136 incurred in the performance of their duties.

137 (f) Within 90 days after the effective date of this section,
 138 the Treasurer, as the chief custodian of public funds, shall
 139 petition the West Virginia Supreme Court of Appeals for a
 140 writ of prohibition pursuant to the court's original
 141 jurisdiction, naming as respondent the State Auditor and
 142 petitioning the court to prohibit the State Auditor from
 143 issuing any warrant for the payment of per diem
 144 compensation to senior judges and justices in excess of the
 145 limitation on the daily rate of per diem compensation in
 146 subsection (c) of this section.

CHAPTER 68

**(Com. Sub. for S. B. 18 - By Senators Trump, Boso,
 Takubo and Cline)**

[Passed February 13, 2019; in effect from passage.]
 [Approved by the Governor on February 25, 2019.]

AN ACT to amend and reenact §61-6-19 of the Code of West Virginia, 1931, as amended, relating generally to crimes against the peace; relating to offenses occurring at State Capitol Complex property; and removing the requirement that a person lawfully entitled to possess a firearm must have a concealed weapons permit to have a firearm secured and out of view in his or her vehicle on the State Capitol Complex.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-19. Willful disruption of governmental processes; offenses occurring at State Capitol Complex; penalties.

1 (a) If any person willfully interrupts or molests the
 2 orderly and peaceful process of any department, division,
 3 agency, or branch of state government or of its political

4 subdivisions, he or she is guilty of a misdemeanor and, upon
5 conviction thereof, shall be fined not more than \$100, or
6 confined in jail not more than six months, or both fined and
7 confined: *Provided*, That any assembly in a peaceable,
8 lawful, and orderly manner for a redress of grievances may
9 not be a violation of this section.

10 (b) It is unlawful for any person to bring upon the State
11 Capitol Complex any weapon as defined in §61-7-2 of this
12 code: *Provided*, That a person who may lawfully possess a
13 firearm may keep a firearm in his or her motor vehicle upon
14 the State Capitol Complex if the vehicle is locked and the
15 weapon is out of normal view. It is unlawful for any person
16 to willfully deface any trees, wall, floor, stairs, ceiling,
17 column, statue, monument, structure, surface, artwork, or
18 adornment in the State Capitol Complex. It is unlawful for
19 any person or persons to willfully block or otherwise
20 willfully obstruct any public access, stair, or elevator in the
21 State Capitol Complex after being asked by a law-
22 enforcement officer acting in his or her official capacity to
23 desist: *Provided, however*, That, in order to preserve the
24 constitutional right of the people to assemble, it is not
25 willful blocking or willful obstruction for persons gathered
26 in a group or crowd if the persons move to the side or part
27 to allow other persons to pass by the group or crowd to gain
28 ingress or egress: *Provided further*, That this subsection
29 does not apply to a law-enforcement officer acting in his or
30 her official capacity.

31 Any person who violates this subsection is guilty of a
32 misdemeanor and, upon conviction thereof, shall be fined
33 not less than \$100 or confined in jail not more than six
34 months, or both.

CHAPTER 69

**(Com. Sub. for S. B. 72 - By Senators Woelfel,
Stollings and Baldwin)**

[Passed March 5, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-11A-9, relating to creating the Sexual Assault Victims' Bill of Rights; declaring additional rights bestowed upon sexual assault survivors regarding medical forensic examinations, sexual assault evidence collection kits, and other similar topics; clarifying the right of a victim to be accompanied by a personal representative during certain proceedings; requiring sexual assault victims be informed or notified of certain rights; incorporating other rights contained in code; and defining terms.

Be it enacted by the Legislature of West Virginia:

PREAMBLE: This act shall be known as Hazel's Law.

ARTICLE 11A. VICTIM PROTECTION ACT.

§61-11A-9. Sexual Assault Victims' Bill of Rights.

1 (a) In addition to those rights afforded victims of crime
2 by other provisions of this code, a sexual assault victim has
3 the following rights:

4 (1) The right to a personal representative of the victim's
5 choice to accompany him or her to a hospital or other health
6 care facility and to attend proceedings concerning the
7 alleged assault, including police interviews and court
8 proceedings: *Provided*, That nothing in this subsection shall

9 be construed to violate established forensic interview
10 protocols;

11 (2) The right to receive a forensic medical examination
12 consistent with the provisions of §61-8B-1(12) of this code
13 conducted by a qualified medical provider in accordance
14 with best practices, taking into consideration the age of the
15 victim and circumstances of the offense;

16 (3) The right to have a sexual assault evidence collection
17 kit tested and preserved by the investigating law-
18 enforcement agency;

19 (4) The right to be informed by the investigating law-
20 enforcement agency of any results of the forensic medical
21 examination, if such disclosure would not impede or
22 compromise an ongoing investigation;

23 (5) The right to be informed in writing of the policies
24 governing the forensic medical examination and
25 preservation of evidence obtained from the examination;

26 (6) The right to receive, upon his or her written request,
27 notification by United States mail, restricted delivery, to his
28 or her last known address, from the custodian of the
29 evidence obtained from the forensic medical examination
30 no fewer than 60 days prior to the date of the intended
31 destruction or disposal of the evidence: *Provided*, That
32 notice to a victim which meets the requirements of this
33 subdivision, whether received by the addressee or not,
34 meets all notice requirements imposed by this section;

35 (7) The right, upon his or her written request, to have
36 the evidence obtained from the forensic medical
37 examination preserved for an additional period not to
38 exceed 10 years; and

39 (8) The right to be informed of the rights afforded a
40 victim pursuant to this section.

41 (b) As used in this section, “sexual assault” means any
42 sexual act proscribed by §61-8-1 *et seq.*, §61-8B-1 *et seq.*,
43 and §61-8D-1 *et seq.* of this code.

●

CHAPTER 70

(Com. Sub. for S. B. 101 - By Senator Trump)

[Passed March 5, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §61-5-27 of the Code of West Virginia, 1931, as amended, relating to equalizing the criminal penalties for intimidating and retaliating against public officers and employees, jurors, and witnesses; increasing penalty for intimidation of such persons to a felony; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-27. Intimidation of and retaliation against public officers and employees, jurors, and witnesses; fraudulent official proceedings and legal processes against public officials and employees; penalties.

1 (a) *Definitions.* — As used in this section:

2 (1) “Fraudulent” means not legally issued or sanctioned
3 under the laws of this state or of the United States, including
4 forged, false, and materially misstated;

5 (2) “Legal process” means an action, appeal, document
6 instrument, or other writing issued, filed, or recorded to
7 pursue a claim against person or property, exercise
8 jurisdiction, enforce a judgment, fine a person, put a lien on
9 property, authorize a search and seizure, arrest a person,
10 incarcerate a person, or direct a person to appear, perform,
11 or refrain from performing a specified act. “Legal process”
12 includes, but is not limited to, a complaint, decree, demand,

13 indictment, injunction, judgment, lien, motion, notice,
14 order, petition, pleading, sentence, subpoena, summons,
15 warrant, or writ;

16 (3) “Official proceeding” means a proceeding involving
17 a legal process or other process of a tribunal of this state or
18 of the United States;

19 (4) “Person” means an individual, group, association,
20 corporation, or any other entity;

21 (5) “Public official or employee” means an elected or
22 appointed official or employee of a state or federal court,
23 commission, department, agency, political subdivision, or
24 any governmental instrumentality;

25 (6) “Recorder” means a clerk or other employee in
26 charge of recording instruments in a court, commission, or
27 other tribunal of this state or of the United States; and

28 (7) “Tribunal” means a court or other judicial or quasi-
29 judicial entity, or an administrative, legislative, or executive
30 body, or that of a political subdivision, created or authorized
31 under the constitution or laws of this state or of the United
32 States.

33 (b) *Intimidation; harassment.* — It is unlawful for a
34 person to use intimidation, physical force, harassment, or a
35 fraudulent legal process or official proceeding, or to
36 threaten to do so where such threat is directed at inciting or
37 producing imminent lawless action of a violent nature that
38 could cause bodily harm and is likely to incite or produce
39 such action or to attempt to do so, with the intent to:

40 (1) Impede or obstruct a public official or employee
41 from performing his or her official duties;

42 (2) Impede or obstruct a juror or witness from
43 performing his or her official duties in an official
44 proceeding;

45 (3) Influence, delay, or prevent the testimony of any
46 person in an official proceeding; or

47 (4) Cause or induce a person to: (A) Withhold
48 testimony, or withhold a record, document or other object
49 from an official proceeding; (B) alter, destroy, mutilate, or
50 conceal a record, document, or other object impairing its
51 integrity or availability for use in an official proceeding; (C)
52 evade an official proceeding summoning a person to appear
53 as a witness or produce a record, document, or other object
54 for an official proceeding; or (D) be absent from an official
55 proceeding to which such person has been summoned.

56 (c) *Retaliation.* — It is unlawful for a person to cause
57 injury or loss to person or property, or to threaten to do so
58 where such threat is directed at inciting or producing
59 imminent lawless action of a violent nature that could cause
60 bodily harm and is likely to incite or produce such action or
61 to attempt to do so, with the intent to:

62 (1) Retaliate against a public official or employee for
63 the performance or nonperformance of an official duty;

64 (2) Retaliate against a juror or witness for performing
65 his or her official duties in an official proceeding; or

66 (3) Retaliate against any other person for attending,
67 testifying, or participating in an official proceeding, or for
68 the production of any record, document, or other object
69 produced by a person in an official proceeding.

70 (d) *Penalty.* — A person convicted of an offense under
71 subsections (b) or (c) of this section is guilty of a felony and
72 shall be confined in a correctional facility not less than one
73 nor more than 10 years, fined not more than \$2,000, or both.

74 (e) *Civil cause of action.* — A person who violates this
75 section is liable in a civil action to any person harmed by the
76 violation for injury or loss to person or property incurred as
77 a result of the commission of the offense and for reasonable
78 attorney's fees, court costs, and other expenses incurred as

79 a result of prosecuting a civil action commenced under this
80 subsection, which is not the exclusive remedy of a person
81 who suffers injury or loss to person or property as a result
82 of a violation of this section.

83 (f) *Civil sanctions.* — In addition to the criminal and
84 civil penalties set forth in this section, any fraudulent
85 official proceeding or legal process brought in a tribunal of
86 this state in violation of this section shall be dismissed by
87 the tribunal and the person may be ordered to reimburse the
88 aggravated person for reasonable attorney's fees, court
89 costs, and other expenses incurred in defending or
90 dismissing such action.

91 (1) *Refusal to record.* — A recorder may refuse to record
92 a clearly fraudulent lien or other legal process against a
93 public official or employee or his or her property. The
94 recorder does not have a duty to inspect or investigate
95 whether a lien or other legal process is fraudulent, nor is the
96 recorder liable for refusing to record a lien or other legal
97 process that the recorder believes is in violation of this
98 section; and

99 (2) If a fraudulent lien or other legal process against a
100 public official or employee or his or her property is recorded
101 then:

102 (A) *Request to release lien.* — The public official or
103 employee may send a written request by certified mail to the
104 person who filed the fraudulent lien or legal process
105 requesting the person to release or dismiss the lien or legal
106 process. If such lien or legal process is not properly released
107 or dismissed within 21 days, then it shall be inferred that the
108 person intended to harass the public official or employee in
109 violation of subsection (b) of this section and shall be
110 subject to the criminal penalties in subsection (d) of this
111 section and any other remedies provided in this section; or

112 (B) *Notice of fraudulent lien.* — A government attorney
113 on behalf of the public official or employee may record a

114 notice of fraudulent lien or legal process with the recorder
115 who accepted the lien or legal process for filing. Such notice
116 shall invalidate the fraudulent lien or legal process and
117 cause it to be removed from the records. No filing fee shall
118 be charged for the filing of the notice.

119 (g) A person's lack of belief in the jurisdiction or
120 authority of this state or of the United States is no defense
121 to prosecution of a civil or criminal action under this
122 section.

123 (h)(1) Nothing in this section prohibits or in any way
124 limits the lawful acts of legitimate public officials or
125 employees;

126 (2) Nothing in this section prohibits or in any way limits
127 a person's lawful and legitimate right to freely assemble,
128 express opinions, or designate group affiliation; or

129 (3) Nothing in this section prohibits or in any way limits
130 a person's lawful and legitimate access to a tribunal of this
131 state or prevents a person from instituting or responding to
132 a lawful action.



CHAPTER 71

**(Com. Sub. for S. B. 152 - By Senators Jeffries,
Baldwin, Stollings, Woelfel and Lindsay)**

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

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

AN ACT to repeal §61-11B-1, §61-11B-2, §61-11B-3, §61-11B-4, and §61-11B-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §61-11-26 of said code; and to amend said code by adding thereto a new section,

designated §61-11-26a, all relating generally to expungement of certain convictions; eliminating statutory authority to reduce certain felonies to misdemeanor status; authorizing those who have used statutory authority to reduce certain felonies to misdemeanors to seek expungement; defining terms; eliminating age limitations for petitioners seeking to expunge certain misdemeanors; expanding eligibility for criminal expungement to persons convicted of certain nonviolent felonies or multiple misdemeanors; providing exclusions from eligibility; establishing time limitations for filing a petition for expungement; creating petition requirements and court procedure for evaluating petitions for orders of expungement for expungable offenses; clarifying disclosure requirements with respect to the information sealed pursuant to an order of expungement, including exemptions; providing standard for inspection of sealed records; establishing fees, including when fees are waived; clarifying that an order of expungement does not reinstate eligibility for certain benefits lost due to expunged conviction; providing time limitations for filing petitions of expungement after completion of certain drug treatment or job training; and making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-26. Expungement of certain criminal convictions; procedures; effect.

1 (a) *Eligibility for expungement.* —

2 (1) *Misdemeanors.* —

3 Subject to the limitations set forth in this section, a
4 person convicted of a misdemeanor offense or offenses
5 may, pursuant to the provisions of this section, petition the
6 circuit court in which the conviction or convictions occurred
7 for expungement of the conviction or convictions and the
8 records associated with the conviction or convictions.

9 (2) *Nonviolent felonies.* —

10 Subject to the limitations set forth in this section, a
11 person convicted of a nonviolent felony offense or offenses
12 arising from the same transaction or series of transactions
13 may, pursuant to the provisions of this section, petition the
14 circuit court in which the conviction or convictions occurred
15 for expungement of the conviction or convictions and the
16 records associated with the conviction or convictions.

17 (b) *Temporal requirements.* —

18 (1) *Misdemeanor.* — A person is not eligible for
19 expungement pursuant to subdivision (1), subsection (a) of
20 this section until one year after conviction, completion of
21 any sentence of incarceration or completion of any period
22 of supervision, whichever is later in time.

23 (2) *More than one misdemeanor.* — A person is not
24 eligible for expungement of multiple misdemeanors
25 pursuant to subdivision (1), subsection (a) of this section
26 until two years after the last conviction, completion of any
27 sentence of incarceration, or completion of any period of
28 supervision ordered for the last conviction, whichever is
29 later in time.

30 (3) *Nonviolent felonies.* — A person is not eligible for
31 expungement of a nonviolent felony pursuant to subdivision
32 (2), subsection (a) of this section until five years after
33 conviction, completion of any sentence of incarceration or
34 completion of any period of supervision, whichever is later
35 in time.

36 (c) *Limitations on eligibility for expungement.* — A
37 person is not eligible for expungement pursuant to
38 subsection (a) of this section for convictions of the
39 following offenses:

40 (1) Any felony offense of violence against the person as
41 defined in subdivision (2), subsection (p) of this section or
42 any misdemeanor offense involving the intentional

- 43 infliction of physical injury to a minor or law-enforcement
44 officer;
- 45 (2) Any felony offense in which the victim of the crime
46 was a minor as defined in subdivision (3), subsection (p) of
47 this section;
- 48 (3) Any violation of §61-8B-1 *et seq.* of this code;
- 49 (4) Any offense in which the petitioner used or exhibited
50 a deadly weapon or dangerous instrument;
- 51 (5) Any violation of §61-2-28 of this code, or any
52 offense which violates §61-2-9(b) or §61-2-9(c) of this code
53 in which the victim was a spouse, a person with whom the
54 person seeking expungement had a child in common, or
55 with whom the person seeking expungement ever cohabited
56 prior to the offense or a violation of §61-2-28(c) of this
57 code;
- 58 (6) Any violation of §61-2-29 of this code;
- 59 (7) Any offense of driving under the influence of
60 alcohol or a controlled substance;
- 61 (8) Any offense which violates §17B-4-3 of this code;
- 62 (9) Any offense which violates §61-8-12 or §61-8-19 of
63 this code;
- 64 (10) Any violation of §61-2-9a of this code;
- 65 (11) Any violation of §61-8B-8 and §61-8B-9 of this
66 code;
- 67 (12) Any violation of §61-3-11 of this code;
- 68 (13) Any conviction for which the sentencing judge
69 made a written finding that the offense was sexually
70 motivated;

71 (14) Any offense which violates §17E-1-13(g) of this
72 code; and

73 (15) Any offense of conspiracy or attempt to commit a
74 felony set forth in subdivisions (1) through (13), inclusive,
75 of this subsection.

76 (d) *Content of petition for expungements.* — Each
77 petition to expunge a conviction or convictions pursuant to
78 this section shall be verified under oath and include the
79 following information: *Provided,* That a petition for the
80 expungement of multiple misdemeanors shall identify and
81 group such information by circuit court, as applicable, from
82 which expungement of a particular conviction or
83 convictions is being sought:

84 (1) The petitioner's current name and all other legal
85 names or aliases by which the petitioner has been known at
86 any time;

87 (2) All of the petitioner's addresses from the date of the
88 offense in connection with which an expungement order is
89 sought to date of the petition;

90 (3) The petitioner's date of birth and Social Security
91 number;

92 (4) The petitioner's date of arrest, the court of
93 jurisdiction, and criminal complaint, indictment, summons,
94 or case number;

95 (5) The statute or statutes and offense or offenses for
96 which the petitioner was charged and of which the petitioner
97 was convicted;

98 (6) The names of any victim or victims, or a statement
99 that there were no identifiable victims;

100 (7) Whether there is any current order for restitution,
101 protection, restraining order, or other no contact order
102 prohibiting the petitioner from contacting the victims or

103 whether there has ever been a prior order for restitution,
104 protection, or restraining order prohibiting the petitioner
105 from contacting the victim. If there is a current order, the
106 petitioner shall attach a copy of that order to his or her
107 petition;

108 (8) The disposition of the matter and sentence imposed,
109 if any;

110 (9) The grounds on which expungement is sought,
111 including, but not limited to, employment or licensure
112 purposes;

113 (10) The steps the petitioner has taken since the time of
114 the offense or offenses toward personal rehabilitation,
115 including treatment, work, or other personal history that
116 demonstrates rehabilitation;

117 (11) Whether petitioner has ever been granted
118 expungement or similar relief regarding a criminal
119 conviction by any court in this state, by the court of any
120 other state, or by any federal court;

121 (12) Any supporting documents, sworn statements,
122 affidavits, or other information supporting the petition for
123 expungement.

124 (e) *Service of petition for expungement.* — The
125 petitioner shall serve a copy of the petition, with any
126 supporting documentation, pursuant to the rules of the trial
127 court upon the following persons or entities:

128 (1) The Superintendent of the State Police;

129 (2) The prosecuting attorney of the county of
130 conviction;

131 (3) The chief of police or other executive head of the
132 municipal police department where the offense was
133 committed;

134 (4) The chief law-enforcement officer of any other law-
135 enforcement agency which participated in the arrest of the
136 petitioner;

137 (5) The superintendent or warden of any institution in
138 which the petitioner was confined; and

139 (6) The circuit court, magistrate court, or municipal
140 court which disposed of the petitioner's criminal charge.

141 (f) The prosecuting attorney of the county in which
142 expungement is sought shall serve the petition for
143 expungement, accompanying documentation, and any
144 proposed expungement order by first class mail to any
145 identified victims.

146 (g) *Notice of opposition.* —

147 (1) Upon receipt of a petition for expungement, the
148 persons and entities listed in subsection (e) of this section,
149 and any other interested person or agency that desires to
150 oppose the expungement may, within 30 days of receipt of
151 the petition, file a notice of opposition with the court with
152 supporting documentation and sworn statements setting
153 forth the reasons for resisting the petition for expungement.

154 (2) A copy of any notice of opposition with supporting
155 documentation and sworn statements shall be served upon
156 the petitioner in accordance with trial court rules.

157 (3) The petitioner may file a reply to a notice of
158 opposition no later than 30 days after service of any notice
159 of opposition to the petition for expungement.

160 (h) *Burden of proof.* — The burden of proof shall be on
161 the petitioner seeking an order of expungement to prove by
162 clear and convincing evidence:

163 (1) That the conviction or convictions for which
164 expungement is sought are the only convictions against the
165 petitioner and that the conviction or convictions are not

166 excluded from expungement by the provisions of this
167 section;

168 (2) That the requisite time has passed since the
169 conviction or convictions or the completion of any sentence
170 of incarceration or period of supervision as set forth in
171 subsection (b) of this section;

172 (3) That the petitioner has no criminal charges pending
173 against him or her;

174 (4) That the expungement is consistent with the public
175 welfare;

176 (5) That the petitioner has, by his or her behavior since
177 the conviction or convictions, evidenced that he or she has
178 been rehabilitated and is law-abiding; and

179 (6) Any other facts considered appropriate or necessary
180 by the court to make a determination regarding the petition
181 for expungement.

182 (i) *Court procedure for petition for expungement.* —

183 Within 60 days of the filing of a petition for
184 expungement the circuit court shall:

185 (1) Summarily grant the petition;

186 (2) Set the matter for hearing; or

187 (3) Summarily deny the petition if the court determines
188 that the petition is insufficient or, based upon supporting
189 documentation and sworn statements filed in opposition to
190 the petition, the court determines that the petitioner, as a
191 matter of law, is not entitled to expungement.

192 (j) *Hearing on petition for expungement.* —

193 If the court sets the matter for hearing, all interested
194 parties who have filed a notice of opposition shall be
195 notified. At the hearing, the court may inquire into the

196 background of the petitioner and shall have access to any
197 reports or records relating to the petitioner that are on file
198 with any law-enforcement authority, the institution of
199 confinement, if any, and parole authority or other agency
200 which was in any way involved with the petitioner's arrest,
201 conviction, sentence, and post-conviction supervision,
202 including any record of arrest or conviction in any other
203 state or federal court. The court may hear testimony of
204 witnesses and any other matter the court considers proper
205 and relevant to its determination regarding the petition. The
206 court shall enter an order reflecting its ruling on the petition
207 for expungement with appropriate findings of fact and
208 conclusions of law.

209 (k) *Sealing of records.* — If the court grants the petition
210 for expungement, it shall order the sealing of all records in
211 the custody of the court and expungement of any records in
212 the custody of any other agency or official, including law-
213 enforcement records. Every agency with records relating to
214 the arrest, charge, or other matters arising out of the arrest
215 or conviction that is ordered to expunge records shall certify
216 to the court within 60 days of the entry of the expungement
217 order that the required expungement has been completed.
218 All orders enforcing the expungement procedure shall also
219 be sealed.

220 (l) *Disclosure of expunged matters.* —

221 (1) Subject to the exceptions set forth in this section,
222 upon expungement, the proceedings in the matter shall be
223 considered, as a matter of law, never to have occurred. The
224 court and other agencies shall reply to any inquiry that no
225 record exists on the matter. The person whose record is
226 expunged shall not have to disclose the fact of the record or
227 any matter relating to the record on an application for
228 employment, credit, or other type of application: *Provided,*
229 That any person applying for a position in which he or she
230 would be engaging in the prevention, detection,
231 investigation, prosecution, or incarceration of persons for
232 violations of the law shall disclose any and all convictions

233 to his or her prospective employer, regardless of whether the
234 conviction or convictions have been expunged pursuant to
235 this section.

236 (2) A person for whom an order of expungement has
237 been entered pursuant to this section may not be found
238 guilty of perjury or otherwise giving a false statement, under
239 any provision of this code, because of that person's failure
240 to recite or acknowledge the arrest, indictment, information,
241 trial, or conviction, as long as the person is in compliance
242 with subdivision (1) of this subsection.

243 (3) Notwithstanding any provisions of this code to the
244 contrary, any person required by state or federal law to
245 obtain a criminal history record check on a prospective
246 employee are authorized to have knowledge of any
247 convictions expunged under this section.

248 (m) *Inspection of sealed records.* — Inspection of the
249 sealed records in the court's possession may thereafter be
250 permitted by the court only upon a motion by the person
251 who is the subject of the records or upon a petition filed by
252 a prosecuting attorney that inspection and possible use of
253 the records in question are necessary to the investigation or
254 prosecution of a crime in this state or another jurisdiction. If
255 the court finds that there is a legitimate reason for access
256 and the interests of justice will be served by granting a
257 petition to inspect the sealed record, it may grant access
258 under the terms and conditions determined by the court.

259 (n) *Fees for filing petition for expungement and*
260 *processing orders of expungement.* — The clerk of the
261 circuit court shall charge and collect in advance the same
262 fee for a petition for expungement as is charged for
263 instituting a civil action pursuant to §59-1-11(a)(1) of this
264 code. A person obtaining an order of expungement pursuant
265 to the provisions of this section shall pay a fee of \$100 to
266 the records division of the West Virginia State Police for the
267 cost of processing the order of expungement deposited into
268 a special revenue account within the State Treasurer's office

269 to be known as the West Virginia State Police Criminal
270 History Account.

271 (o) Notwithstanding any provision of this code to the
272 contrary, a person may only obtain the relief afforded by the
273 provisions of this section and §61-11-26a of this code once.

274 (p) For the purposes of this section:

275 (1) “Court record” means an official record of a court
276 about a proceeding that the clerk of the court or other court
277 personnel maintains. “Court record” includes an index, a
278 docket entry, a petition or other pleading, a memorandum, a
279 transcription of proceedings, an electronic recording, an
280 order, and a judgment.

281 (2) “Felony crime of violence against the person” means
282 those felony offenses set forth in §61-2-1 *et seq.*, §61-3E-1
283 *et seq.*, §61-8B-1 *et seq.*, and §61-8D-1 *et seq.* of this code.

284 (3) “Felony offenses in which the victim was a minor”
285 means felony violation of §61-3C-14b, §61-8-1 *et seq.*, §61-
286 8A-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this
287 code.

288 (4) “Nonviolent felony” means a felony that:

289 (A) Is not an offense listed in subsection (c) of this
290 section;

291 (B) Is not an offense involving the intentional infliction
292 of serious bodily injury;

293 (C) Is an offense the conviction of which is based on
294 facts and circumstances of which the circuit court finds to
295 be consistent with the purposes of this article; and

296 (D) Is an offense the conviction of which the circuit
297 court finds does not involve violence or potential violence
298 to another person or the public.

299 (5) “Records” do not include the records of the
300 Governor, the Legislature, or the Secretary of State that
301 pertain to a grant of pardon. Records that pertain to a grant
302 of pardon are not subject to an order of expungement.

303 (6) “Seal” means removing information from public
304 inspection in accordance with this section.

305 (7) “Sealing” means:

306 (A) For a record kept in a courthouse, removing the
307 record to a separate, secure area to which persons who do
308 not have a legitimate reason for access are denied access;

309 (B) For electronic information about a proceeding on
310 the website maintained by a magistrate court, circuit court,
311 or the Supreme Court of Appeals, removing the record from
312 the public website; and

313 (C) For a record maintained by any law-enforcement
314 agency, removing the record to a separate, secure area to
315 which persons who do not have a legitimate reason for
316 access are denied access.

317 (q) *Statutory construction.* — Nothing in this section
318 may be construed to allow a person obtaining relief pursuant
319 to this section to be eligible for reinstatement of any
320 retirement or employment benefit which he or she lost or
321 forfeited due to the conviction or convictions expunged.

322 (r) The enactment of this section during the 2019
323 regular session includes the repeal of the provisions of §61-
324 11B-1 *et seq.* of this code. Any person that had a sentence
325 reduction pursuant to the provisions of §61-11B-1 *et seq.* of
326 this code may petition the court of record to have the
327 criminal offense reduction order converted into an order of
328 expungement. Upon verification by the court that the
329 petitioner qualifies, the court shall enter an order of
330 expungement of the petitioner’s conviction.

§61-11-26a. Expungement of certain criminal convictions with approved treatment or recovery and job program.

1 (a) Notwithstanding any provisions of §61-11-26 of this
2 code to the contrary, any person who has been convicted of
3 a nonviolent felony offense or multiple misdemeanors and
4 that would be eligible for expungement pursuant to the
5 provisions of §61-11-26 of this code and who: (1) has a
6 medically documented history of substance abuse and
7 successful compliance with a substance abuse treatment or
8 recovery and counseling program approved by the Secretary
9 of the Department of Health and Human Resources; or (2)
10 graduates from a West Virginia Department of Education-
11 approved Job Readiness Adult Training course, or both, if
12 applicable, may petition the circuit court or circuit courts in
13 which the conviction or convictions occurred for
14 expungement of the conviction or convictions and the
15 records associated therewith as provided in §61-11-26 of
16 this code as follows:

17 (1) Any person who has been convicted of a single
18 misdemeanor that would be eligible for expungement
19 pursuant to §61-11-26 of this code and satisfies the
20 requirements of this section, is eligible for expungement
21 pursuant to §61-11-26(a)(1) of this code upon successful
22 compliance with an approved substance abuse treatment and
23 recovery and counseling program for 90 days or upon
24 completion of an approved Job Readiness Adult Training
25 course, or both, if applicable, but after the completion of any
26 sentence of incarceration or completion of any period of
27 supervision, whichever is later in time.

28 (2) Any person who has been convicted of multiple
29 misdemeanors that would be eligible for expungement
30 pursuant to §61-11-26 of this code and satisfies the
31 requirements of this section is not eligible for expungement
32 pursuant to §61-11-26(a)(1) of this code until one year after
33 the last conviction, completion of any sentence of
34 incarceration, or completion of any period of supervision
35 ordered for the last conviction, whichever is later in time.

36 (3) Any person who has been convicted of a nonviolent
37 felony offense that would be eligible for expungement
38 pursuant to §61-11-26 of this code and satisfies the
39 requirements of this section is not eligible for expungement
40 pursuant to §61-11-26(a)(2) of this code until three years
41 after conviction, completion of any sentence of
42 incarceration, or completion of any period of supervision,
43 whichever is later in time.

44 (b) In addition to the required content of a petition for
45 expungement as required by §61-11-26(d) of this code, any
46 person petitioning for an expungement pursuant to the
47 provisions of this section shall also include the following, if
48 applicable:

49 (1) Documentation of compliance with an approved
50 treatment or recovery and counseling program; and

51 (2) Certificate of graduation from an approved Adult
52 Training Job Readiness course.

53 (c) A person may file only one petition for
54 expungement, to the circuit court or circuit courts as
55 applicable, pursuant to the provisions of this section and the
56 provisions of §61-11-26 of this code.

57 (d) The fee of \$100 to the records division of the West
58 Virginia State Police for the cost of processing the order of
59 expungement required in §61-11-26(n) of this code is
60 waived for petitions of expungement filed pursuant to the
61 provisions of this section.

ARTICLE 11B. CRIMINAL OFFENSE REDUCTION.

§61-11B-1. Legislative intent.

1 [Repealed.]

§61-11B-2. Definitions.

1 [Repealed.]

§61-11B-3. Criminal offense reduction.

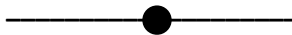
1 [Repealed.]

§61-11B-4. Petition for reduction.

1 [Repealed.]

§61-11B-5. Employer protections.

1 [Repealed.]



CHAPTER 72

**(Com. Sub. for S. B. 264 - By Senators Trump,
Hamilton, Cline and Tarr)**

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §61-11A-4 of the Code of West Virginia, 1931, as amended, relating to requiring courts to order restitution to victims of crime where it is economically practicable; providing for consideration of economic hardship within the order; and providing for the definition of any person compensating a victim for loss to include the West Virginia Crime Victims Compensation Fund for purposes of receiving restitution for funds paid to a crime victim.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.**§61-11A-4. Restitution; when ordered.**

1 (a) The court, when sentencing a defendant convicted of
2 a felony or misdemeanor causing physical, psychological,
3 or economic injury or loss to a victim, shall order, in

4 addition to or in lieu of any other penalty authorized by law,
5 that the defendant make restitution to any victim of the
6 offense to the greatest extent economically practicable when
7 considering the defendant's financial circumstances.

8 If the court does not order restitution, or orders only
9 partial restitution, under this section, the court shall state on
10 the record the reasons therefor.

11 (b) The order shall require that the defendant:

12 (1) In the case of an offense resulting in damage to, loss
13 of, or destruction of property of a victim of the offense:

14 (A) Return the property to the owner of the property or
15 someone designated by the owner; or

16 (B) If return of the property under paragraph (A) of this
17 subdivision is impossible, impractical, or inadequate, pay an
18 amount equal to the greater of: (i) The value of the property
19 on the date of sentencing; or (ii) the value of the property on
20 the date of the damage, loss, or destruction less the value (as
21 of the date the property is returned) of any part of the
22 property that is returned;

23 (2) In the case of an offense resulting in bodily injury to
24 a victim:

25 (A) Pay an amount equal to the cost of necessary
26 medical and related professional services and devices
27 relating to physical, psychiatric, and psychological care,
28 including nonmedical care and treatment rendered in
29 accordance with a method of healing recognized by the law
30 of the place of treatment;

31 (B) Pay an amount equal to the cost of necessary
32 physical and occupational therapy and rehabilitation; and

33 (C) Reimburse the victim for income lost by the victim
34 as a result of the offense;

35 (3) In the case of an offense resulting in bodily injury
36 that also results in the death of a victim, pay an amount
37 equal to the cost of necessary funeral and related services;
38 and

39 (4) In any case, if the victim (or if the victim is deceased,
40 the victim's estate) consents, or if payment is impossible or
41 impractical, make restitution in services in lieu of money, or
42 make restitution to a person or organization designated by
43 the victim or the estate.

44 (c) If the court decides to order restitution under this
45 section, the court shall, if the victim is deceased, order that
46 the restitution be made to the victim's estate.

47 (d) The court shall impose an order of restitution to the
48 extent that the order is as fair as possible to the victim and
49 the imposition of the order will not unduly complicate or
50 prolong the sentencing process.

51 (e) The court shall not impose restitution with respect to
52 a loss for which the victim has received or is to receive
53 compensation from a third party: *Provided*, That the court
54 may, in the interest of justice, order restitution to any person
55 who has compensated the victim for loss to the extent that
56 the person paid the compensation. An order of restitution
57 shall require that all restitution to victims under the order be
58 made before any restitution to any other person under the
59 order is made. As used in this section, the term "any person
60 who has compensated the victim for loss" shall include the
61 West Virginia Crime Victims Compensation Fund.

62 (f) The court may require that such defendant make
63 restitution under this section within a specified period or in
64 specified installments. The end of the period or the last
65 installment shall not be later than: (1) The end of the period
66 of probation, if probation is ordered; (2) five years after the
67 end of the term of imprisonment imposed, if the court does
68 not order probation; and (3) five years after the date of
69 sentencing in any other case.

70 If not otherwise provided by the court under this
71 subsection, restitution shall be made immediately.

72 (g) If the defendant is placed on probation or paroled
73 under this article, any restitution ordered under this section
74 shall be a condition of the probation or parole unless the
75 court or Parole Board finds restitution to be wholly or
76 partially impractical as set forth in this article.

77 The court may revoke probation and the Parole Board
78 may revoke parole if the defendant fails to comply with the
79 order. In determining whether to revoke probation or parole,
80 the court or Parole Board shall consider the defendant's
81 employment status, earning ability, financial resources, the
82 willfulness of the defendant's failure to pay, and any other
83 special circumstances that may have a bearing on the
84 defendant's ability to pay.

85 (h) An order of restitution may be enforced by the state
86 or a victim named in the order to receive the restitution in
87 the same manner as a judgment in a civil action.

88 (i) Notwithstanding any provision of this section to the
89 contrary, the court may order, in addition to or in lieu of,
90 restitution, that a defendant be required to contribute
91 monetarily, or through hours of service, to a local crime
92 victim's assistance program or juvenile mediation program
93 which meets the following requirements:

94 (1) The program is approved by a circuit judge presiding
95 in the judicial circuit; and

96 (2) The program is a nonprofit organization certified as
97 a corporation in this state, and is governed by a board of
98 directors.



CHAPTER 73

**(Com. Sub. for S. B. 295 - By Senators Hamilton,
Boso, Facemire, Ihlenfeld, Jeffries, Maynard, Smith,
Sypolt, Cline, Trump, Rucker and Lindsay)**

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §51-3-19; and to amend and reenact §61-5-7 of said code, all relating to granting courthouse security officers arrest powers under certain circumstances; authorizing certain West Virginia courthouse security officers to carry concealed firearms while off duty with court approval; setting forth firearm training and qualification requirements; requiring supervising authority to issue photo identification and certification cards; specifying policy content; stating legislative intent that the new code section be consistent with the federal Law-Enforcement Officers Safety Act; establishing an effective date of July 1, 2020; criminalizing the obstruction of a courthouse security officer, correctional officer, and certain Fire Marshal's office personnel while they are acting in their official capacities; criminalizing fleeing from a courthouse security officer, correctional officer, and certain Fire Marshal's office personnel; criminalizing the disarming or attempted disarming of courthouse security officers and certain Fire Marshal's office personnel; including the investigation of misdemeanor offenses as subject to prohibition against making false statements; criminalizing the making of materially false statements as to misdemeanor and felony investigations to the State Fire Marshal and certain Fire Marshal's office personnel; and setting criminal penalties.

Be it enacted by the Legislature of West Virginia:

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 3. COURTS IN GENERAL.

§51-3-19. Courthouse security officers; arrest authority; concealed-carry authority; requirements for participation; authorization to carry firearms concealed consistent with federal law.

1 (a) In furtherance of enhanced courthouse security for
2 court personnel, litigants, and the general public, courthouse
3 security officers charged with effecting courthouse security
4 may arrest any person committing a violation of the criminal
5 laws of the State of West Virginia, the United States, or a
6 violation of Rule 42 of the West Virginia Rules of Criminal
7 Procedure occurring within a courthouse while the
8 courthouse security officer is engaged in his or her official
9 duties;

10 (b) For purposes of subsection (a) of this section, the
11 arrest authority of courthouse security officers is consistent
12 with that of a county deputy sheriff;

13 (c) In any judicial circuit where there is an order in
14 effect authorizing courthouse security officers to carry a
15 firearm, the circuit court may also authorize, consistent with
16 the provisions of this section, qualifying courthouse security
17 officers to carry a concealed firearm for self-defense
18 purposes pursuant to 18 U.S.C. § 926B, upon the following
19 criteria being met:

20 (1) The supervising authority of the courthouse security
21 officer shall require courthouse security officers desiring to
22 participate to regularly qualify in the use of firearms with
23 standards therefor which are equal to or exceed those
24 required of sheriff's deputies in the county in which the
25 courthouse security officers are employed;

26 (2) The supervising authority of the courthouse security
27 officers shall issue photographic identification and
28 certification cards which identify the courthouse security

29 officers as law-enforcement employees of the supervising
30 entity pursuant to the provisions of §30-29-12 of this code;

31 (3) Any policy instituted pursuant to this section shall
32 include provisions that:

33 (A) Preclude or remove a person from participation in
34 the concealed firearm program who is subject to any
35 disciplinary or legal action which could result in the loss of
36 his or her authority to participate in the program;

37 (B) Preclude from participation persons prohibited by
38 federal or state law from possessing or receiving a firearm;
39 and

40 (C) Prohibit persons from carrying a firearm pursuant to
41 this subsection while in an impaired state as defined in
42 §17C-5-2 of this code; and

43 (4) A courthouse security officer who participates in a
44 program authorized by this section is responsible, at his or
45 her expense, for obtaining and maintaining a suitable
46 firearm and ammunition for use when not engaged in his or
47 her official duties.

48 (d) It is the intent of the Legislature in enacting this
49 section during the 2019 regular session of the Legislature
50 that active courthouse security personnel meeting all the
51 requirements of this section to also meet the requirements
52 of the federal Law-Enforcement Officers Safety Act, 18
53 U.S.C. § 926B.

54 (e) The provisions of this section shall become effective
55 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.

1 (a) A person who by threats, menaces, acts, or otherwise
2 forcibly or illegally hinders or obstructs or attempts to
3 hinder or obstruct a law-enforcement officer, probation
4 officer, parole officer, courthouse security officer,
5 correctional officer, the State Fire Marshal, or a full-time
6 deputy or assistant fire marshal acting in his or her official
7 capacity is guilty of a misdemeanor and, upon conviction
8 thereof, shall be fined not less than \$50 nor more than \$500
9 or confined in jail not more than one year, or both fined and
10 confined.

11 (b) A person who intentionally disarms or attempts to
12 disarm a law-enforcement officer, correctional officer,
13 probation officer, parole officer, courthouse security officer,
14 the State Fire Marshal, or a full-time deputy or assistant fire
15 marshal acting in his or her official capacity is guilty of a
16 felony and, upon conviction thereof, shall be imprisoned in
17 a state correctional facility not less than one nor more than
18 five years.

19 (c) A person who, with intent to impede or obstruct a
20 law-enforcement officer, the State Fire Marshal or a full-
21 time deputy or assistant fire marshal in the conduct of an
22 investigation of a misdemeanor or felony offense,
23 knowingly and willfully makes a materially false statement
24 is guilty of a misdemeanor and, upon conviction thereof,
25 shall be fined not less than \$25 nor more than \$200, or
26 confined in jail for five days, or both fined and confined.
27 The provisions of this section do not apply to statements
28 made by a spouse, parent, stepparent, grandparent, sibling,
29 half sibling, child, stepchild or grandchild, whether related
30 by blood or marriage, of the person under investigation.
31 Statements made by the person under investigation may not
32 be used as the basis for prosecution under this subsection.
33 For purposes of this subsection, “law-enforcement officer”
34 does not include a watchman, a member of the West
35 Virginia State Police or college security personnel who is
36 not a certified law-enforcement officer.

37 (d) A person who intentionally flees or attempts to flee
38 by any means other than the use of a vehicle from a law-
39 enforcement officer, probation officer, parole officer,
40 courthouse security officer, correctional officer, the State
41 Fire Marshal, or a full-time deputy or assistant fire marshal
42 acting in his or her official capacity who is attempting to
43 make a lawful arrest of or to lawfully detain the person, and
44 who knows or reasonably believes that the officer is
45 attempting to arrest or lawfully detain him or her, is guilty
46 of a misdemeanor and, upon conviction thereof, shall be
47 fined not less than \$50 nor more than \$500 or confined in
48 jail not more than one year, or both fined and confined.

49 (e) A person who intentionally flees or attempts to flee
50 in a vehicle from a law-enforcement officer, probation
51 officer or parole officer acting in his or her official capacity
52 after the officer has given a clear visual or audible signal
53 directing the person to stop is guilty of a misdemeanor and,
54 upon conviction thereof, shall be fined not less than \$500
55 nor more than \$1,000 and shall be confined in jail not more
56 than one year.

57 (f) A person who intentionally flees or attempts to flee
58 in a vehicle from a law-enforcement officer, probation
59 officer, or parole officer acting in his or her official capacity
60 after the officer has given a clear visual or audible signal
61 directing the person to stop, and who operates the vehicle in
62 a manner showing a reckless indifference to the safety of
63 others, is guilty of a felony and, upon conviction thereof,
64 shall be fined not less than \$1,000 nor more than \$2,000 and
65 shall be imprisoned in a state correctional facility not less
66 than one nor more than five years.

67 (g) A person who intentionally flees or attempts to flee
68 in a vehicle from a law-enforcement officer, probation
69 officer, or parole officer acting in his or her official capacity
70 after the officer has given a clear visual or audible signal
71 directing the person to stop, and who causes damage to the
72 real or personal property of a person during or resulting
73 from his or her flight, is guilty of a misdemeanor and, upon

74 conviction thereof, shall be fined not less than \$1,000 nor
75 more than \$3,000 and shall be confined in jail for not less
76 than six months nor more than one year.

77 (h) A person who intentionally flees or attempts to flee
78 in a vehicle from a law-enforcement officer, probation
79 officer, or parole officer acting in his or her official capacity
80 after the officer has given a clear visual or audible signal
81 directing the person to stop, and who causes bodily injury
82 to a person during or resulting from his or her flight, is guilty
83 of a felony and, upon conviction thereof, shall be
84 imprisoned in a state correctional facility not less than three
85 nor more than 10 years.

86 (i) A person who intentionally flees or attempts to flee
87 in a vehicle from a law-enforcement officer, probation
88 officer, or parole officer acting in his or her official capacity
89 after the officer has given a clear visual or audible signal
90 directing the person to stop, and who causes death to a
91 person during or resulting from his or her flight, is guilty of
92 a felony and, upon conviction thereof, shall be imprisoned
93 in a state correctional facility for not less than five nor more
94 than 15 years. A person imprisoned pursuant to this
95 subsection is not eligible for parole prior to having served a
96 minimum of three years of his or her sentence or the
97 minimum period required by §62-12-13 of this code,
98 whichever is greater.

99 (j) A person who intentionally flees or attempts to flee
100 in a vehicle from a law-enforcement officer, probation
101 officer, or parole officer acting in his or her official capacity
102 after the officer has given a clear visual or audible signal
103 directing the person to stop, and who is under the influence
104 of alcohol, controlled substances or drugs, is guilty of a
105 felony and, upon conviction thereof, shall be imprisoned in
106 a state correctional facility not less than three nor more than
107 10 years.

108 (k) For purposes of this section, the term “vehicle”
109 includes any motor vehicle, motorcycle, motorboat, all-

110 terrain vehicle, or snowmobile as those terms are defined in
111 §17A-1-1 of this code, whether or not it is being operated
112 on a public highway at the time and whether or not it is
113 licensed by the state.

114 (l) For purposes of this section, the terms “flee”,
115 “fleeing”, and “flight” do not include a person’s reasonable
116 attempt to travel to a safe place, allowing the pursuing law-
117 enforcement officer to maintain appropriate surveillance,
118 for the purpose of complying with the officer’s direction to
119 stop.

120 (m) The revisions to subsections (e), (f), (g), and (h) of
121 this section enacted during the 2010 regular legislative
122 session shall be known as the Jerry Alan Jones Act.

123 (n) (1) No person, with the intent to purposefully
124 deprive another person of emergency services, may
125 interfere with or prevent another person from making an
126 emergency communication, which a reasonable person
127 would consider necessary under the circumstances, to law-
128 enforcement, fire, or emergency medical service personnel.

129 (2) For the purpose of this subsection, the term
130 “interfere with or prevent” includes, but is not limited to,
131 seizing, concealing, obstructing access to or disabling or
132 disconnecting a telephone, telephone line, or equipment or
133 other communication device.

134 (3) For the purpose of this subsection, the term
135 “emergency communication” means communication to
136 transmit warnings or other information pertaining to a
137 crime, fire, accident, power outage, disaster, or risk of injury
138 or damage to a person or property.

139 (4) A person who violates this subsection is guilty of a
140 misdemeanor and, upon conviction thereof, shall be
141 confined in jail for a period of not less than one day nor
142 more than one year or shall be fined not less than \$250 nor
143 more than \$2,000, or both fined and confined.

144 (5) A person who is convicted of a second offense under
145 this subsection is guilty of a misdemeanor and, upon
146 conviction thereof, shall be confined in jail for not less than
147 three months nor more than one year or fined not less than
148 \$500 nor more than \$3,000, or both fined and confined.

149 (6) A person who is convicted of a third or subsequent
150 offense under this subsection is guilty of a misdemeanor
151 and, upon conviction thereof, shall be confined in jail not
152 less than six months nor more than one year or fined not less
153 than \$500 nor more than \$4,000, or both fined and confined.

154 (7) In determining the number of prior convictions for
155 purposes of imposing punishment under this subsection, the
156 court shall disregard all such prior convictions occurring
157 more than 10 years prior to the offense in question.



CHAPTER 74

**(Com. Sub. for S. B. 402 - By Senators Sypolt, Beach,
Stollings, Hamilton, Boso, Cline, Baldwin, Maroney
and Prezioso)**

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

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

AN ACT to amend and reenact §19-1A-3b of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-3-52 of said code, all relating to authorizing the Division of Forestry to investigate and enforce timber theft and intentional damage to the timber of another; increasing the threshold between felony and misdemeanor from \$1,000 to \$2,500; requiring enhanced penalties for subsequent offenses occurring within 10 years of the first offense; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

CHAPTER 19. AGRICULTURE.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-3b. Timber theft; investigations; criminal and civil penalties.

1 (a) Timber theft is the misappropriation or taking of
2 timber belonging to another, or proceeds derived from the
3 sale of timber, either taken without the consent of the owner,
4 or by means of fraudulent conduct, practices, or
5 representations, with the intent to deprive the owner
6 permanently of the timber or proceeds derived therefrom.

7 (b) The Division of Forestry has the primary
8 responsibility for the collection, preparation, and central
9 registry of information relating to timber theft. The division
10 has the authority to investigate and enforce the provisions
11 of this section when violations of the provisions of §61-3-
12 52 of this code occur.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-52. Wrongful injuries to timber; criminal penalties.

1 (a) Any person who knowingly and intentionally cuts
2 down, injures, removes, or destroys, without the permission
3 of the owner or his or her agent, timber of a value of \$2,500
4 or less is guilty of a misdemeanor and, upon conviction
5 thereof, shall be fined not more than \$2,500 or confined in
6 jail for not more than 30 days, or both fined and confined.

7 (b) Any person who knowingly and intentionally cuts
8 down, injures, removes, or destroys, without the permission
9 of the owner or his or her agent, timber of a value of \$2,500
10 or more or who is convicted of a second or subsequent
11 violation within 10 years of subsection (a) of this section
12 shall be guilty of a felony and, upon conviction thereof, shall

13 be fined not more than three times the value of the timber
14 cut down, injured, removed, or destroyed, or imprisoned in
15 a state correctional facility for not less than one nor more
16 than three years, or both fined and imprisoned.

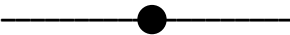
17 (c) The necessary trimming and removal of timber to
18 permit the construction, repair, maintenance, cleanup, and
19 operations of pipelines and utility lines and appurtenances
20 of public utilities, public service corporations, and to aid
21 registered land surveyors and professional engineers in the
22 performance of their professional services, and
23 municipalities, and pipeline companies, or lawful operators
24 and product purchasers of natural resources other than
25 timber, shall not be considered a willful and intentional
26 cutting down, injuring, removing, or destroying of timber.

27 (d) The necessary trimming and removal of timber for
28 boundary line maintenance, for the construction,
29 maintenance, and repair of streets, roads, and highways, or
30 for the control and regulation of traffic thereon by the state
31 and its political subdivisions or registered land surveyors
32 and professional engineers, shall not be considered a willful
33 and intentional cutting down, injuring, removing, or
34 destroying of timber.

35 (e) No fine or imprisonment imposed pursuant to this
36 section shall be construed to limit any cause of action by a
37 landowner for recovery of damages otherwise allowed by
38 law. If a person charged or convicted under the provisions
39 of this section enters into an agreement with a landowner to
40 make financial restitution for the landowner's timber
41 damages, any applicable statute of limitations effecting the
42 landowner's cause of action shall be tolled from the date the
43 agreement was entered into until a breach of the agreement
44 occurs.

45 (f) If a criminal action is brought under the provisions
46 of this section, the county prosecutor shall publish a Class
47 II legal advertisement in compliance with the provisions of
48 §59-3-1 *et seq.* of this code in the county where the property

49 involved is located which provides a description of the
50 property and a general summary of the timber damages. If a
51 landowner suffering timber damages is not aware of those
52 damages prior to the publication of the Class II legal
53 advertisement, any applicable statute of limitations
54 effecting the landowner's cause of action for the recovery
55 of damages shall be tolled from the time the damages were
56 incurred, and may not commence until the date the final
57 Class II legal advertisement is published.



CHAPTER 75

**(H. B. 2739 - By Delegates Hollen, Graves, Anderson
and Malcolm)
(By Request of the West Virginia Consolidated
Public Retirement Board)**

[Passed March 8, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10D-13; and to amend and reenact §61-10-20 of said code, all relating to failure of employers to make contributions on behalf of employees to a retirement plan administered by the Consolidated Public Retirement Board; authorizing the State Auditor, county commission, or sheriff of the county in which the employer is located to withhold moneys due to an employer that is delinquent in required contributions to a retirement plan after the Consolidated Public Retirement Board has certified the delinquency; authorizing withheld moneys to be applied to the retirement system the delinquent payments would have been made to; providing for interest on delinquencies; requiring the Consolidated Public Retirement Board to provide notice to a participating employer 30 days prior to certifying a delinquency under this section; making it a criminal offense for persons who are responsible for

ensuring that an entity complies with the requirements of a retirement plan administered by the Consolidated Public Retirement Board to knowingly and willfully fail to make employee or employer contributions to a retirement plan for a period of 60 days after the payment is due; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

**ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT
BOARD.**

**§5-10D-13. Withholding state and county money to satisfy
delinquencies.**

1 (a) If any employer participating in a retirement plan
2 administered by the Consolidated Public Retirement Board
3 pursuant to §5-10D-1 *et seq.* of this code fails to make any
4 payment due to the retirement system for a period of 60 days
5 after the payment is due, the participating employer is
6 delinquent, and the delinquency shall be certified by the
7 Consolidated Public Retirement Board to the State Auditor,
8 the county commission of the county in which the
9 participating employer is located, and the sheriff of the
10 county in which the participating employer is located. If any
11 participating employer becomes delinquent as provided in
12 this section, the State Auditor, county commission, or
13 sheriff is authorized and directed to withhold any money
14 due the participating employer by the state or county until
15 the delinquency, together with regular interest thereon, is
16 satisfied. The money withheld by the State Auditor, county
17 commission, or sheriff shall be paid to the applicable
18 retirement system on behalf of the participating employer.

19 (b) The Consolidated Public Retirement Board shall
20 provide notice to the participating employer 30 days prior
21 to certifying delinquency under this section.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-20. Failure of employers to provide certain benefits for employees.

1 (a) In addition to any other penalty or punishment
2 otherwise prescribed by law, any employer who is party to
3 an agreement to pay or provide benefits or wage
4 supplements and who without reasonable justification
5 willfully fails or refuses to pay the amount or amounts
6 necessary to provide the benefits or furnish the supplements
7 within 30 days after the payments are required to be made,
8 is guilty of a misdemeanor and, upon conviction thereof,
9 shall be fined not less than \$100 nor more than \$500. When
10 the employer is a corporation, the president, secretary,
11 treasurer or officer exercising responsibility for the
12 nonpayment is guilty of the offense prohibited by this
13 section.

14 (b) Any person who is responsible for ensuring that an
15 entity complies with the requirements of a retirement plan
16 administered by the Consolidated Public Retirement Board
17 pursuant to §5-10D-1 *et seq.* of this code, who knowingly
18 and willfully fails to make employee or employer
19 contributions to the retirement plan for a period of 60 days
20 after the payment is due is guilty of a misdemeanor and,
21 upon conviction thereof, shall be fined not less than \$100
22 nor more than \$500 or shall be confined in jail for not more
23 than six months, or both fined and confined.

24 (c) Conviction of a violation of subsection (b) of this
25 section is prima facie evidence of official misconduct.

●

CHAPTER 76

**(Com. Sub. for H. B. 2975 - By Delegates Miller and
D. Kelly)**

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

AN ACT to amend and reenact §61-8B-2 and §61-8B-10 of the Code of West Virginia, 1931, as amended, all relating generally to protecting persons incarcerated or under corrections or court supervision from sexual exploitation by persons supervising them; clarifying that persons participating in community corrections programs lack consent to engage in sexual conduct with persons supervising them in such programs; clarifying that volunteers supervising incarcerated persons or persons under corrections or court supervision are prohibited from engaging in sexual acts with incarcerated persons, supervisees, or participants; updating agency and code references; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-2. Lack of consent.

- 1 (a) Whether or not specifically stated, it is an element of
- 2 every offense defined in this article that the sexual act was
- 3 committed without the consent of the victim.

- 4 (b) Lack of consent results from:
- 5 (1) Forcible compulsion;
- 6 (2) Incapacity to consent; or

7 (3) If the offense charged is sexual abuse, any
8 circumstances in addition to the forcible compulsion or
9 incapacity to consent in which the victim does not expressly
10 or impliedly acquiesce in the actor's conduct.

11 (c) A person is deemed incapable of consent when such
12 person is:

13 (1) Less than sixteen years old;

14 (2) Mentally defective;

15 (3) Mentally incapacitated;

16 (4) Physically helpless; or

17 (5) Subject to incarceration, confinement or supervision
18 by a state, county, or local government entity, when the
19 actor is a person prohibited from having sexual intercourse
20 or causing sexual intrusion or sexual contact pursuant to
21 §61-8B-10 of this code.

**§61-8B-10. Imposition of sexual acts on persons incarcerated
or under supervision; penalties.**

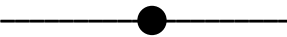
1 (a) Any person employed by the Division of Corrections
2 and Rehabilitation, any person working at a correctional
3 facility managed by the Commissioner of Corrections and
4 Rehabilitation pursuant to contract or as an employee of a
5 state agency or as a volunteer or any person employed by,
6 or acting pursuant to, the authority of any sheriff, county
7 commission, or court to ensure compliance with the
8 provisions of §62-11B-1 *et seq.* of this code who engages in
9 sexual intercourse, sexual intrusion, or sexual contact with
10 a person who is incarcerated in this state is guilty of a felony
11 and, upon conviction thereof, shall be fined not more than
12 \$5,000 or imprisoned in a state correctional facility for not
13 less than one nor more than five years or both fined and
14 imprisoned.

15 (b) Any person employed by the Division of Corrections
16 and Rehabilitation as a parole officer or by the West
17 Virginia Supreme Court of Appeals as an adult or juvenile
18 probation officer, who engages in sexual intercourse, sexual
19 intrusion, or sexual contact with a person said parole officer
20 or probation officer is charged as part of his or her
21 employment with supervising, is guilty of a felony and,
22 upon conviction thereof, shall be fined not more than \$5,000
23 or imprisoned in a state correctional facility for not less than
24 one nor more than five years, or both fined and imprisoned.

25 (c) Any person working or volunteering in an alternative
26 sentence program authorized by the provisions of §62-11C-
27 1, *et seq.* of this code who, as part of his or her employment
28 or volunteer duties, supervises program participants,
29 engages in sexual intercourse, sexual intrusion, or sexual
30 contact with a program participant is guilty of a felony and
31 upon conviction, shall be fined not more than \$5,000,
32 imprisoned in a state correctional facility for not less than
33 one nor more than five years, or both fined and imprisoned.

34 (d) The term “incarcerated in this state” for purposes of
35 this section includes in addition to its usual meaning,
36 offenders serving a sentence under the provisions of article
37 §62-11B-1 *et seq.* of this code.

38 (e) Authorized pat-down, strip search or other security
39 related tasks do not constitute sexual contact pursuant to this
40 section.



CHAPTER 77

(Com. Sub. for S. B. 17 - By Senators Trump and Boso)

[Passed January 29, 2019; in effect from passage.]
 [Approved by the Governor on February 11, 2019.]

AN ACT to amend and reenact §62-12-2 of the Code of West Virginia, 1931, as amended, relating to eligibility for probation generally; adding the option of a psychological study and diagnosis to the studies and treatment required for a person to be eligible for probation upon conviction of certain sexually related offenses; and adding offenses involving preparation, distribution, or exhibition of obscene matter to minors to the list of offenses for which such examinations are required for probation eligibility.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-2. Eligibility for probation.

1 (a) All persons who are found guilty of or plead guilty
 2 to any felony, the maximum penalty for which is less than
 3 life imprisonment, and all persons who are found guilty of
 4 or plead guilty to any misdemeanor are eligible for
 5 probation, notwithstanding the provisions of §61-11-18 and
 6 §61-11-19 of this code.

7 (b) The provisions of subsection (a) of this section to the
 8 contrary notwithstanding, any person who commits or
 9 attempts to commit a felony with the use, presentment, or
 10 brandishing of a firearm is not eligible for probation.
 11 Nothing in this section may apply to an accessory before the
 12 fact or a principal in the second degree who has been

13 convicted as if he or she were a principal in the first degree
14 if, in the commission of or in the attempted commission of
15 the felony, only the principal in the first degree used,
16 presented, or brandished a firearm.

17 (c)(1) The existence of any fact which would make any
18 person ineligible for probation under subsection (b) of this
19 section because of the commission or attempted
20 commission of a felony with the use, presentment, or
21 brandishing of a firearm may not be applicable unless the
22 fact is clearly stated and included in the indictment or
23 presentment by which that person is charged and is either:

24 (A) Found by the court upon a plea of guilty or nolo
25 contendere; or

26 (B) Found by the jury, if the matter be tried before a
27 jury, upon submitting to the jury a special interrogatory for
28 such purpose; or

29 (C) Found by the court, if the matter be tried by the
30 court, without a jury.

31 (2) The amendments to this subsection adopted in the
32 year 1981:

33 (A) Apply to all applicable offenses occurring on or
34 after August 1 of that year;

35 (B) Apply with respect to the contents of any indictment
36 or presentment returned on or after August 1 of that year
37 irrespective of when the offense occurred;

38 (C) Apply with respect to the submission of a special
39 interrogatory to the jury and the finding to be made thereon
40 in any case submitted to the jury on or after August 1 of that
41 year or to the requisite findings of the court upon a plea of
42 guilty or in any case tried without a jury: *Provided*, That the
43 state shall give notice in writing of its intent to seek such
44 finding by the jury or court, as the case may be, which notice
45 shall state with particularity the grounds upon which the

46 finding is sought as fully as such grounds are otherwise
47 required to be stated in an indictment, unless the grounds
48 therefor are alleged in the indictment or presentment upon
49 which the matter is being tried; and

50 (D) May not apply with respect to cases not affected by
51 the amendment and in such cases the prior provisions of this
52 section shall apply and be construed without reference to the
53 amendment.

54 Insofar as such amendments relate to mandatory
55 sentences without probation, all such matters requiring such
56 sentence shall be proved beyond a reasonable doubt in all
57 cases tried by the jury or the court.

58 (d) For the purpose of this section, the term “firearm”
59 means any instrument which will, or is designed to, or may
60 readily be converted to, expel a projectile by the action of
61 an explosive, gunpowder, or any other similar means.

62 (e) Any person who has been found guilty of, or pleaded
63 guilty to, a violation of the provisions of §61-8-12 of this
64 code, the provisions of §61-8A-1 *et seq.* of this code, the
65 provisions of §61-8B-1 *et seq.* or §61-8C-1 *et seq.* of this
66 code, or under the provisions of §61-8D-5 of this code may
67 only be eligible for probation after undergoing a physical,
68 mental, and psychiatric or psychological study and
69 diagnosis which shall include an ongoing treatment plan
70 requiring active participation in sexual abuse counseling at
71 a mental health facility or through some other approved
72 program: *Provided*, That nothing disclosed by the person
73 during such study or diagnosis may be made available to
74 any law-enforcement agency or other party without that
75 person's consent, or admissible in any court of this state,
76 unless the information disclosed indicates the intention or
77 plans of the probationer to do harm to any person, animal,
78 institution, or property, in which case the information may
79 be released only to such persons as might be necessary for
80 protection of the said person, animal, institution, or
81 property.

82 Within 90 days of the effective date of this section as
83 amended and reenacted during the first extraordinary
84 session of the Legislature, 2006, the Secretary of the
85 Department of Health and Human Resources shall propose
86 rules and emergency rules for legislative approval in
87 accordance with the provisions of §29A-3-1 *et seq.* of this
88 code establishing qualifications for sex offender treatment
89 programs and counselors based on accepted treatment
90 protocols among licensed mental health professionals.

91 (f) Any person who has been convicted of a violation of
92 the provisions of §61-8B-1 *et seq.* and §61-8C-1 *et seq.* or
93 §61-8D-5 and §61-8D-6 of this code, or of §61-2-14, §61-
94 8-12, and §61-8-13 of this code, or of a felony violation
95 involving a minor of §61-8-6 or §61-8-7 of this code, or of
96 a similar provision in another jurisdiction shall be required
97 to be registered upon release on probation. Any person who
98 has been convicted of an attempt to commit any of the
99 offenses set forth in this subsection shall also be registered
100 upon release on probation.

101 (g) The probation officer shall within three days of
102 release of the offender send written notice to the State Police
103 of the release of the offender. The notice shall include:

104 (1) The full name of the person;

105 (2) The address where the person shall reside;

106 (3) The person's Social Security number;

107 (4) A recent photograph of the person;

108 (5) A brief description of the crime for which the person
109 was convicted;

110 (6) Fingerprints; and

111 (7) For any person determined to be a sexually violent
112 predator as defined in §15-12-2a of this code, the notice
113 shall also include:

- 114 (i) Identifying factors, including physical
115 characteristics;
- 116 (ii) History of the offense; and
- 117 (iii) Documentation of any treatment received for the
118 mental abnormality or personality disorder.



CHAPTER 78

(Com. Sub. for S. B. 40 - By Senator Weld)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §62-16-1, §62-16-2, §62-16-3, §62-16-4, §62-16-5, §62-16-6, and §62-16-7, all relating to establishing a Military Service Members Court program within the Supreme Court of Appeals; providing legislative findings establishing the need for creation of a Military Service Members Court program; defining terms; granting authority to the Supreme Court of Appeals to establish a Military Service Members Court program under the oversight of its administrator; providing for no termination of any program until at least six months after written notice of the intent to terminate the program has been provided by the Supreme Court of Appeals Administrator to the Speaker of the House of Delegates and the President of the Senate; providing that a Military Service Members Court judge may establish rules and make special orders as necessary that do not conflict with rules and orders promulgated by the Supreme Court of Appeals to effectuate the purposes of the program; providing for funding mechanisms which may include court fees; providing for limitation of liability; setting forth eligibility requirements for participation; providing for written

agreement to participate in the court; setting forth procedure to participate in court; allowing for mental health and drug treatment services for participants; providing for sanctions for violation of provisions of the court; setting forth incentives for successful participation; setting out disposition on successful completion; providing that Military Service Members Courts shall if deemed appropriate by the Supreme Court of Appeals collect and maintain information on program participants; setting forth that offenders may be required to provide certain information to Military Service Members Courts; and requiring Military Service Members Courts to keep offender treatment records in a secure environment separated from the court records to which the public has access.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. THE MILITARY SERVICE MEMBERS COURT ACT.

§62-16-1. Short title.

1 This may be cited as the Military Service Members
2 Court Act.

§62-16-2. Legislative findings.

1 (a)(1) The Legislature recognizes that while most
2 veterans are strengthened by their military service, the
3 combat experiences of many veterans have unfortunately
4 left a growing number of veterans who suffer from issues
5 such as Post Traumatic Stress Disorder and traumatic brain
6 injury. A growing body of research shows that one in five
7 veterans will have symptoms of a mental illness, mental
8 health disorder, or cognitive impairment. One in six
9 veterans who served in either Operation Enduring Freedom
10 or Operation Iraqi Freedom suffer from substance abuse and
11 related issues. As a result, many veterans have found
12 themselves in the criminal court system charged with crimes
13 which may be directly attributable to these service-related
14 issues.

15 (2) The Legislature further recognizes that a Military
16 Service Members Court is necessary to link veterans with
17 the programs, benefits, and services that are necessary to
18 help them overcome these issues and provide them with
19 rehabilitation services instead of incarceration.

20 (3) Given the context of veteran life, especially given
21 their past training and experiences in the Armed Forces, it
22 is reasonably anticipated and likely that military service
23 members would respond favorably to a structured
24 environment. The Military Service Members Court is a
25 professional, structured, and monitored program which
26 mandates and provides participant accountability and
27 responsibility, including mandatory court appearances,
28 treatment, and counseling sessions, as well as frequent and
29 random testing for drug and alcohol use. However, the
30 Legislature also finds that some may still struggle. Those
31 are the veterans who need the structure and support of a
32 Military Service Members Court program the most. Without
33 the structure of a Military Service Members Court program
34 mentally ill and challenged veterans may well reoffend,
35 remain in the criminal court system, and suffer under the
36 emotional, physical, and mental yoke of substance abuse.

37 (4) The Legislature creates the Military Service
38 Members Court to ensure that these veterans in need are able
39 meet their obligations to themselves, their family, their
40 loved ones, the court, and their community.

§62-16-3. Definitions.

1 For the purposes of this article:

2 “Assessment” means an evaluation to determine
3 whether a criminal defendant is a military service member
4 as defined by this section, that the offense he or she has been
5 charged with are attributable to their military service, and if
6 the offender would benefit from the provisions set forth in
7 this article.

8 “Court” means a Military Service Members Court.

9 “Department” means the West Virginia Department of
10 Veterans Assistance.

11 “Military Service Members Court program” or
12 “program” is a program that includes pre-adjudicatory and
13 post-adjudicatory treatment for military service members.

14 “Military service member” means a person who is
15 currently serving in the Army, Air Force, Marines, Navy, or
16 Coast Guard on active duty, reserve status, or in the National
17 Guard, or a person who served in the active military, or who
18 was discharged or released under conditions other than
19 dishonorable.

20 “Offender” means a criminal defendant who qualifies as
21 a military service member under this article.

22 “Post-adjudicatory program” means a program in which
23 the offender has admitted guilt or has been found guilty and
24 agrees, with the prosecutor’s consent, to enter a court
25 program as part of his or her sentence.

26 “Pre-adjudicatory program” means a program that
27 allows the offender, with the consent of the prosecutor,
28 team, and the court to expedite the offender’s criminal case
29 before conviction or before filing of a criminal case and
30 requires the offender to agree to and successfully complete
31 the court program as part of the written agreement.

32 “VA” means the United States Department of Veterans
33 Affairs.

34 “VJO” means the Veterans Justice Outreach program of
35 the United States Department of Veterans Affairs.

36 “Written agreement” means the agreement executed to
37 allow a military service member to participate in a court
38 program.

§62-16-4. Court authorization; funding; immunity from liability.

1 (a) *Court authorization.* — The Supreme Court of
2 Appeals is hereby authorized to establish a Military Service
3 Members Court program, under the oversight of its
4 administrator. Each Military Service Members Court may
5 be a stand-alone court or operated in conjunction with an
6 existing drug court or other specialty court program. The
7 Supreme Court of Appeals is further encouraged to give
8 deference to circuits or regions in the operation of those
9 programs to maximize flexibility, and to take into account
10 regional and other differences and circumstance.

11 (b) Once a program is established, termination of any
12 program may not take place until at least six months after
13 written notice of the intent to terminate the program has
14 been provided by the Supreme Court of Appeals
15 Administrator to the Speaker of the House of Delegates and
16 the President of the Senate.

17 (c) Each court judge may establish rules and may make
18 special orders as necessary that do not conflict with rules
19 and orders promulgated by the Supreme Court of Appeals
20 to effectuate the purposes of this article.

21 (d) A court may offer pre-adjudication or post-
22 adjudication programs for adult offenders.

23 (e) Nothing contained in this article confers a right or an
24 expectation of a right to participate in a court program nor
25 does it obligate a court to accept every military service
26 member offender.

27 (f) Neither the establishment of a Military Service
28 Members Court nor anything in this article may be
29 construed as limiting the discretion of the prosecuting
30 attorney to act on any criminal case which he or she
31 determines advisable to prosecute.

32 (g) *Funding.* — Each Military Service Members Court,
33 with the guidance of the Supreme Court of Appeals, may
34 establish a schedule for the payment of reasonable fees and

35 costs to be paid by participants necessary to conduct the
36 program.

37 (h) Nothing in this article prohibits Military Service
38 Members Courts from obtaining supplemental funds or
39 exploring grants to support the courts.

40 (i) *Immunity from liability.* — Any person who, in good
41 faith, provides services pursuant to this article is not liable
42 in any civil action, unless his or her actions were the result
43 of gross negligence or willful misconduct. The grant of
44 immunity provided in this section extends to all employees
45 and administrative personnel of a court.

§62-16-5. Eligibility; written agreement.

1 (a) *Eligibility.* — A military service member offender,
2 who is eligible for probation based upon the nature of the
3 offense for which he or she has been charged, and in
4 consideration of his or her criminal background, if any,
5 may, upon application, be admitted into a court program
6 only upon the agreement of the prosecutor and the offender.
7 Additionally, the court must also determine whether the
8 offense is in any way attributable to the offender's military
9 service.

10 (b) A military service member offender may not
11 participate in the court program if he or she has been
12 charged with any of the following offenses:

13 (1) A sexual offense, including, but not limited to, a
14 violation of the felony provisions of §61-8-1 *et seq.*, §61-
15 8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this
16 code, or a criminal offense where the judge has made a
17 written finding that the offense was sexually motivated;

18 (2) A felony violation of the provisions of §61-8D-2,
19 §61-8D-2a, or §61-8D-3a of this code;

20 (3) A felony violation of the provisions of §61-14-3 or
21 §61-14-4 of this code;

22 (4) A felony violation of §61-2-9b or §61-2-14 of this
23 code;

24 (5) A felony violation of §61-2-28 of this code;

25 (6) A felony violation of §17C-5-2(b) of this code; or

26 (7) If he or she has previously been convicted in this
27 state, another state, or in a federal court for any of the
28 offenses enumerated above.

29 (c) *Written agreement.* — Participation in a Military
30 Service Members Court program, with the consent of both
31 the prosecutor and the court, shall be pursuant to a written
32 agreement. This written agreement shall set forth all of the
33 agreed upon provisions to allow the military service
34 member offender to proceed in the court. The offender shall
35 execute a written agreement with the court as to his or her
36 participation in the program and shall agree to all of the
37 terms and conditions of the program, including, but not
38 limited to, the possibility of sanctions or incarceration for
39 failing to comply with the terms of the program.

40 (d) Upon successful completion of a court program, the
41 judge shall dispose of an offender's case in the manner
42 prescribed by the written agreement and by the applicable
43 policies and procedures adopted by the court. Disposition
44 may include, but is not limited to, withholding criminal
45 charges, dismissal of charges, probation, deferred
46 sentencing, suspended sentencing, split sentencing, or a
47 reduced period of incarceration.

**§62-16-6. Procedure; mental health and substance abuse
treatment; violation; termination.**

1 (a) *Procedure.* — Upon application, the court shall order
2 the offender to submit to an eligibility screening, a mental
3 health and drug/alcohol screening, and an assessment by the
4 Department of Veterans Affairs (VA) Veterans Justice
5 Outreach to provide information on the offender's mental
6 health or military service member status. The assessment shall

7 include a risks assessment and be based, in part, upon the
8 known availability of treatment resources available to the
9 court. The assessment shall also include recommendations for
10 treatment of the conditions which are indicating a need for
11 treatment under the monitoring of the court and reflect a level
12 of risk assessed for the individual seeking admission. The court
13 is not required to order an assessment if a valid screening or
14 assessment related to the present charge(s) pending against the
15 offender has been completed within the previous 60 days.

16 (b) The court may order the offender to complete
17 substance abuse treatment in an outpatient, inpatient,
18 residential, or jail-based custodial treatment program, order the
19 offender to complete mental health counseling in an inpatient
20 or outpatient basis, comply with all physician
21 recommendations regarding medications, and complete all
22 follow-up treatment. The mental health issues for which
23 treatment may be provided include, but are not limited to, post-
24 traumatic stress disorder, traumatic brain injury, and
25 depression.

26 (c) *Mental health and substance abuse treatment.* —
27 The court may maintain a network of mental health
28 treatment programs and substance abuse treatment
29 programs representing a continuum of graduated mental
30 health and substance abuse treatment options commensurate
31 with the needs of offenders; these shall include programs
32 with the VA, the department, this state, and community-
33 based programs.

34 (d) *Violation.* — The court may impose reasonable
35 sanctions under the offender's written agreement, including,
36 but not limited to, imprisonment or dismissal of the offender
37 from the program. The court may reinstate criminal
38 proceedings against him or her for a violation of probation,
39 conditional discharge, or supervision hearing, if the court
40 finds from the evidence presented, including, but not limited
41 to, the reports or proffers of proof from the court's
42 professionals that:

43 (1) The offender is not performing satisfactorily in the
44 assigned program;

45 (2) The offender is not benefitting from educational
46 treatment or rehabilitation;

47 (3) The offender has engaged in criminal conduct
48 rendering him or her unsuitable for the program; or

49 (4) The offender has otherwise violated the terms and
50 conditions of the program or his or her sentence or is for any
51 reason unable to participate.

52 (e) *Termination.* — Upon successful completion of the
53 terms and conditions of the program, the court may dismiss
54 the original charges against the offender, successfully
55 terminate the offender's sentence, permit the offender to
56 enter into a plea agreement to a lesser offense, or otherwise
57 discharge him or her from any further proceedings against
58 him or her in the original prosecution.

59 (f) Notwithstanding any provision of this code to the
60 contrary, upon successful completion of the terms and
61 conditions of the program, or if the presiding judge
62 determines the lack of the ability to operate a motor vehicle
63 is preventing program success, the court may expunge any
64 driving offenses that prevent the veteran offender from
65 obtaining a West Virginia driver's license.

§62-16-7. Program integrity and offender accountability.

1 (a) If deemed appropriate by the Supreme Court of
2 Appeals or its administrative office, the courts shall collect
3 and maintain information on participants which may
4 include, but is not limited to, the following:

5 (1) The participants' prior criminal history;

6 (2) The participants' prior substance abuse and mental
7 health treatment history;

8 (3) The participants' employment, education, and
9 income histories;

10 (4) The participants' gender, race, ethnicity, marital and
11 family status, and any child custody and support obligations;

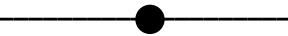
12 (5) Instances of participants' recidivism occurring
13 during and after participation in a court program.
14 Recidivism may be measured at intervals of six months, one
15 year, two years, and five years after successful graduation
16 from Military Service Members Court;

17 (6) The number of offenders screened for eligibility, the
18 number of eligible offenders who were and were not
19 admitted, and their case dispositions; and

20 (7) The costs of operation and sources of funding.

21 (b) An offender may be required, as a condition of
22 pretrial diversion, probation, or parole, to provide the
23 information described in this section. The collection and
24 maintenance of information under this section shall be
25 collected in a standardized format according to applicable
26 guidelines set forth by the Supreme Court of Appeals.

27 (c) To protect an offenders' privacy in accordance with
28 federal and state confidentiality laws, a court shall keep
29 treatment records in a secure environment, separated from
30 the court records to which the public has access.



CHAPTER 79

(Com. Sub. for S. B. 61 - By Senators Weld and Trump)

[Amended and again passed March 6, 2019 as a result of the objection of the Governor; in effect ninety days from passage.]

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

AN ACT to amend and reenact §62-1D-6, §62-1D-8, and §62-1D-9 of the Code of West Virginia, 1931, as amended, relating to including the crime of extortion to the list of crimes for which a prosecutor may apply for a court order authorizing interception of communications; permitting for the lawful disclosure of

lawfully intercepted communications in court proceedings including federal court; and permitting the use of derivative crime evidence to obtain an arrest warrant or indictment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.

§62-1D-6. Admissibility of evidence.

1 Evidence obtained, directly or indirectly, by the
2 interception of any wire, oral, or electronic communication
3 shall be received in evidence only in grand jury proceedings
4 and criminal proceedings in magistrate court, circuit court,
5 and any other court of competent jurisdiction: *Provided*,
6 That evidence obtained in violation of the provisions of this
7 article shall not be admissible in any proceeding.

§62-1D-8. County prosecuting attorney or duly appointed special prosecutor may apply for order authorizing interception.

1 The prosecuting attorney of any county or duly
2 appointed special prosecutor may apply to one of the
3 designated circuit judges referred to in §62-1D-7 of this
4 code and the judge, in accordance with the provisions of this
5 article, may grant an order authorizing the interception of
6 wire, oral, or electronic communications by an officer of the
7 investigative or law-enforcement agency when the
8 prosecuting attorney or special prosecutor has shown
9 reasonable cause to believe the interception would provide
10 evidence of the commission of: (1) Kidnapping or
11 abduction, as defined and prohibited by the provisions of
12 §61-2-14 and §61-2-14a of this code and including threats
13 to kidnap or demand ransom, as defined and prohibited by
14 the provisions of §61-2-14c of this code; (2) any offense
15 included and prohibited by §25-4-11, §61-5-8, §61-5-9, and
16 §61-5-10 or §62-8-1 of this code to the extent that any of
17 said sections provide for offenses punishable as a felony; (3)
18 felony violations of §60A-1-101 *et seq.* of this code; (4)

19 violations of §61-14-1 *et seq.* of this code; (5) violations of
20 §61-2-1 of this code; (6) violations of §61-2-12 of this code;
21 (7) felony violations of §61-8B-1 *et seq.* of this code; (8)
22 violations of §61-1-1 of this code; (9) violations of §61-13-
23 3 of this code; (10) extortion, as defined in §61-2-13 of this
24 code; or (11) any aider or abettor to any of the offenses
25 referenced in this section or any conspiracy to commit any
26 of the offenses referenced in this section if any aider,
27 abettor, or conspirator is a party to the communication to be
28 intercepted.

§62-1D-9. Lawful disclosure or use of contents of communication.

1 (a) Any investigative or law-enforcement officer who
2 has obtained knowledge of the contents of any wire, oral, or
3 electronic communication or evidence derived therefrom,
4 may disclose the contents to another investigative or law-
5 enforcement officer of any state or any political subdivision
6 thereof, the United States or any territory, protectorate, or
7 possession of the United States, including the District of
8 Columbia, only to the extent that the disclosure is required
9 for the proper performance of the official duties of the
10 officer making or receiving the disclosure, however, a
11 record of such disclosure and the date, time, method of
12 disclosure, and the name of the person or persons to whom
13 disclosure is made shall be forwarded, under seal, to the
14 designated circuit judge who authorized such interception,
15 who shall preserve said record for not less than 10 years. In
16 the event the designated judge shall leave office prior to the
17 expiration of this 10-year period, he or she shall transfer
18 possession of said record to another designated judge.

19 (b) Any investigative or law-enforcement officer who has
20 obtained knowledge of the contents of any wire, oral, or
21 electronic communication or evidence derived therefrom or
22 any investigative or a law-enforcement officer of any state or
23 any political subdivision thereof, the United States or any
24 territory, protectorate or possession of the United States,
25 including the District of Columbia, who obtains such

26 knowledge by lawful disclosure may use the contents to the
27 extent that the use is appropriate to the proper performance
28 of his or her official duties under the provisions of this article.

29 (c) Any person who has received any information
30 concerning a wire, oral, or electronic communication
31 intercepted in accordance with the provisions of this article
32 or evidence derived therefrom, may disclose the contents of
33 that communication or the derivative evidence while giving
34 testimony under oath or affirmation in any criminal
35 proceeding held under the authority of this state, any
36 political subdivision of this state, or the federal courts of the
37 United States.

38 (d) An otherwise privileged wire, oral, or electronic
39 communication intercepted in accordance with, or in
40 violation of, the provisions of this article does not lose its
41 privileged character: Provided, That when an investigative
42 or law-enforcement officer, while engaged in intercepting
43 wire, oral, or electronic communications in the manner
44 authorized by this article, intercepts a wire, oral, or
45 electronic communication and it becomes apparent that the
46 conversation is attorney-client in nature, the investigative or
47 law-enforcement officer shall immediately terminate the
48 monitoring of that conversation: *Provided, however,* That
49 notwithstanding any provision of this article to the contrary,
50 no device designed to intercept wire, oral, or electronic
51 communications shall be placed or installed in such a
52 manner as to intercept wire, oral, or electronic
53 communications emanating from the place of employment
54 of any attorney at law, licensed to practice law in this state.

55 (e) When an investigative or law-enforcement officer,
56 while engaged in intercepting wire, oral, or electronic
57 communications in the manner authorized herein, intercepts
58 wire, oral, or electronic communications relating to offenses
59 other than those specified in the order of authorization, the
60 contents thereof, and evidence derived therefrom, may be
61 disclosed or used as provided in §62-1D-9(a) and §62-1D-
62 9(b) of this code. Such contents and any evidence derived

63 therefrom may be used under §62-1D-9(c) of this code when
64 authorized or approved by the designated circuit judge
65 where such judge finds on subsequent application that the
66 contents were otherwise intercepted in accordance with the
67 provisions of this article. The application shall be made as
68 soon as may be practicable after such contents or the
69 evidence derived therefrom is obtained.

70 (f) Any law-enforcement officer of the United States, who
71 has lawfully received any information concerning a wire, oral,
72 or electronic communication or evidence lawfully derived
73 therefrom, may disclose the contents of that communication or
74 the derivative evidence while giving testimony under oath or
75 affirmation in any criminal proceeding held under the
76 authority of this state or of the United States.

77 (g) Any information relating to criminal activities other
78 than those activities for which an order to intercept
79 communications may be granted pursuant to §62-1D-8 of this
80 code may be disclosed only if such relates to the commission
81 of a felony under the laws of this state or of the United States,
82 and such information may be offered, if otherwise
83 admissible, as evidence in any such criminal proceeding.



CHAPTER 80

(Com. Sub. for S. B. 387 - By Senator Weld)

[Passed February 21, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 7, 2019.]

AN ACT to repeal §5-1-6, §5-1-7, §5-1-8, §5-1-9, §5-1-10, §5-1-11, and §5-1-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §62-14A-1, §62-14A-2, §62-14A-3, §62-14A-4, §62-14A-5, §62-14A-6, and §62-14A-7, all relating

generally to extradition; recodifying existing extradition procedures in a new article; including persons who have been improperly released prior to completion of a sentence as being subject to extradition; designating the Commissioner of the Division of Corrections and Rehabilitation as the responsible official as to incarcerated persons subject to extradition; clarifying the proper types and number of documents used in the extradition process; and updating of designated persons or entities in other jurisdictions involved in the extradition 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 1. THE GOVERNOR.

§5-1-6. Extradition of fugitives from foreign nations.

1 [Repealed.]

§5-1-7. Extradition of persons charged with crime in another state or imprisoned or awaiting trial in another state.

1 [Repealed.]

§5-1-8. Governor's warrant of arrest.

1 [Repealed.]

§5-1-9. Hearing after arrest; application for writ of habeas corpus; arrest and confinement of fugitives from another state; bail; persons involved in criminal or civil actions in this state.

1 [Repealed.]

§5-1-10. Return of fugitive from this state.

1 [Repealed.]

§5-1-11. Immunity from service of civil process; waiver of extradition proceedings; nonwaiver of rights of state; trial on other charges after return.

1 [Repealed.]

§5-1-12. How costs paid; complainant responsible for.

1 [Repealed.]

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 14A. EXTRADITION.

§62-14A-1. Extradition of fugitives from foreign nations.

1 The Governor, whenever required by the executive
2 authority of the United States pursuant to the Constitution and
3 laws thereof, shall deliver over to justice any person found
4 within this state who shall be charged with having committed
5 any crime without the jurisdiction of the United States.

6 The Governor, though not so required, may in his or her
7 discretion deliver over to justice any person found within
8 this state who shall be charged with having committed
9 without the jurisdiction of the United States any crime
10 except treason, which by the laws of this state, if committed
11 herein, would be punishable by death or imprisonment in
12 the penitentiary. The Governor shall require such evidence
13 of the guilt of the person so charged, as would be necessary
14 to justify an indictment against the person, had the crime
15 charged been committed in this state. The expense of the
16 apprehension and delivery shall be defrayed by those to
17 whom the delivery is made.

§62-14A-2. Extradition of persons charged with crime in another state or imprisoned or awaiting trial in another state.

1 (a) Where appearing in this article, the term "Governor"
2 includes any person performing the functions of Governor

3 by authority of the law of this state. The term “executive
4 authority” includes the Governor, and any person
5 performing the functions of Governor in a state other than
6 this state. The term “state”, referring to a state other than
7 this state, includes any other state or territory, organized or
8 unorganized, of the United States of America.

9 (b) Subject to the provisions of this article, the
10 provisions of the Constitution of the United States
11 controlling, and any and all acts of Congress enacted in
12 pursuance thereof, it is the duty of the Governor of this state
13 to have arrested and delivered up to the executive authority
14 of any other state of the United States any person charged
15 in that state with treason, felony, or other crime, who has
16 fled from justice and is found in this state: *Provided*, That
17 the demand or application of the executive authority of such
18 other state is accompanied by an affidavit or sworn evidence
19 that the demand or application is made in good faith for the
20 punishment of crime, and not for the purpose of collecting
21 a debt or pecuniary mulct, or of removing the alleged
22 fugitive to a foreign jurisdiction with a view to serve him or
23 her there with civil process.

24 (c) No demand for the extradition of a person charged
25 with crime in another state shall be recognized by the
26 Governor unless in writing alleging, except in cases arising
27 under subsection (g) of this section, that the accused was
28 present in the demanding state at the time of the commission
29 of the alleged crime, and that thereafter he or she fled from
30 the state, and accompanied by a copy of an indictment
31 found, or by information supported by affidavit, in the state
32 having jurisdiction of the crime, or by a copy of an affidavit
33 made before a magistrate or justice thereof, together with a
34 copy of any warrant which was issued thereupon; or by a
35 copy of a judgment of conviction or a sentence imposed in
36 execution thereof, together with a statement by the
37 executive authority of the demanding state that the person
38 claimed has escaped from confinement or has broken the
39 terms of his or her bail, probation, or parole. The indictment,
40 information, or affidavit made before the magistrate or

41 justice must substantially charge the person demanded with
42 having committed a crime under the law of that state; and
43 the copy of indictment, information, affidavit, judgment of
44 conviction, or sentence must be authenticated by the
45 executive authority making the demand.

46 (d) When a demand shall be made upon the Governor of
47 this state by the executive authority of another state for the
48 surrender of a person so charged with crime, the Governor
49 may call upon the Attorney General, any prosecuting
50 officer, or the West Virginia State Police, in this state to
51 investigate or assist in investigating the demand, and to
52 report to him or her the situation and circumstances of the
53 person so demanded, and whether he or she ought to be
54 surrendered.

55 (e) When it is desired to have returned to this state a
56 person charged in this state with crime, and such person is
57 imprisoned or is held under criminal proceedings then
58 pending against him or her in another state, the Governor of
59 this state may agree with the executive authority of such
60 other state for the extradition of such person before the
61 conclusion of such proceedings or his or her term of
62 sentence in such other state, upon condition that such person
63 be returned to such other state at the expense of this state as
64 soon as the prosecution in this state is terminated.

65 (f) The Governor of this state may also surrender on
66 demand of the executive authority of any other state any
67 person in this state who is charged in the manner provided
68 in §62-14A-5(b) of this code, with having violated the laws
69 of the state whose executive authority is making the
70 demand, even though such person left the demanding state
71 voluntarily (involuntarily).

72 (g) The Governor of this state may also surrender, on
73 demand of the executive authority of any other state, any
74 person in this state charged in such other state in the manner
75 provided in subsection (c) of this section, with committing
76 an act in this state, or in a third state, intentionally resulting

77 in a crime in the state whose executive authority is making
78 the demand, and the provisions of this article not otherwise
79 inconsistent, shall apply to such cases, even though the
80 accused was not in that state at the time of the commission
81 of the crime, and has not fled therefrom.

§62-14A-3. Governor's warrant of arrest.

1 (a) If the Governor decides that the demand should be
2 complied with, the Governor shall sign a warrant of arrest
3 which shall be sealed by the Secretary of State with the
4 Great Seal of West Virginia, and be directed by the
5 Governor to any peace officer or other person whom he or
6 she may think fit to entrust with the execution thereof. The
7 warrant must substantially recite the facts necessary to the
8 validity of its issuance.

9 (b) Such warrant shall authorize the peace officer or
10 other person directed to arrest the accused at any time and
11 any place where he or she may be found within the state and
12 to command the aid of all peace officers or other persons in
13 the execution of the warrant, and to deliver the accused,
14 subject to the provision of this article, to the duly authorized
15 agent of the demanding state.

16 (c) The Governor may recall the warrant of arrest or
17 may issue another warrant whenever the Governor deems
18 proper.

19 (d) Every such peace officer or other person empowered
20 to make the arrest shall have the same authority, in arresting
21 the accused, to command assistance therein, as peace
22 officers have by law in the execution of any criminal process
23 directed to them, with like penalties against those who
24 refuse their assistance.

§62-14A-4. Hearing after arrest; application for writ of habeas corpus; arrest and confinement of fugitives from another state; bail; persons involved in criminal or civil actions in this state.

1 (a) No person arrested upon a warrant shall be delivered
2 over to the agent whom the executive authority demanding
3 him or her appointed to receive him or her unless he or she
4 shall first be taken forthwith before a judge of a court of
5 record in this state, who shall inform him or her of the
6 demand made for his or her surrender and of the crime with
7 which he or she is charged, and that he or she has the right
8 to demand and procure legal counsel and if the prisoner or
9 his or her counsel shall state that he, she, or they desire to
10 test the legality of his or her arrest, the judge of the court of
11 record shall fix a reasonable time to be allowed him or her
12 within which to apply for a writ of habeas corpus. When a
13 writ is applied for, notice thereof, and of the time and place
14 of hearing thereon, shall be given to the prosecuting
15 attorney of the county in which the arrest is made and in
16 which the accused is in custody, and to the agent of the
17 demanding state.

18 (b) Any officer who delivers to the agent for extradition
19 of the demanding state a person in his or her custody under
20 the Governor's warrant, in willful disobedience to
21 subsection (a) of this section, shall be guilty of a
22 misdemeanor and, on conviction thereof, shall be fined not
23 more than \$1,000 or be imprisoned not more than six
24 months, or both.

25 (c) The officer or persons executing the Governor's
26 warrant of arrest, or the agent of the demanding state to
27 whom the prisoner may have been delivered, may, when
28 necessary, confine the prisoner in any city, county, or
29 regional jail; and the keeper of the jail shall receive and
30 safely keep the prisoner until the officer or person having
31 charge of him or her is ready to proceed on his or her route,
32 the officer or person being chargeable with the expense of
33 keeping.

34 The officer or agent of a demanding state to whom a
35 prisoner may have been delivered following extradition
36 proceedings in another state, or to whom a prisoner may
37 have been delivered after waiving extradition in the other

38 state, and who is passing through this state with such a
39 prisoner for the purpose of immediately returning the
40 prisoner to the demanding state may, when necessary,
41 confine the prisoner in any city, county, or regional jail; and
42 the keeper of the jail shall receive and safely keep the
43 prisoner until the officer or agent having charge of him or
44 her is ready to proceed on his or her route, the officer or
45 agent, however, being chargeable with the expense of
46 keeping: *Provided*, That the officer or agent shall produce
47 and show to the keeper of the jail satisfactory written
48 evidence of the fact that he or she is actually transporting a
49 prisoner to the demanding state after a requisition by the
50 executive authority of the demanding state. The prisoner
51 may not be entitled to demand a new requisition while in
52 this state.

53 (d) Whenever any person within this state shall be
54 charged on the oath of any credible person before any judge
55 or magistrate of this state with the commission of any crime
56 in any other state and, except in cases arising under §62-
57 14A-2(g) of this code, with having fled from justice, or with
58 having been convicted of a crime in that state and having
59 escaped from confinement, or having broken the terms of
60 his or her bail, probation, or parole, or whenever complaint
61 has been made before any judge or magistrate in this state
62 setting forth on the affidavit of any credible person in
63 another state that a crime has been committed in the state
64 and that the accused has been charged in the state with the
65 commission of the crime, and, except in cases arising under
66 §62-14A-2(g) of this code, has fled from justice, or with
67 having been convicted of a crime in that state and having
68 escaped from confinement, or having broken the terms of
69 his or her bail, probation, or parole, and is believed to be in
70 this state, the judge or magistrate shall issue a warrant
71 directed to any peace officer commanding him or her to
72 apprehend the person named therein, wherever he or she
73 may be found in this state, and to bring him or her before
74 the same or any other judge, magistrate, or court who or
75 which may be available in, or convenient of access to, the

76 place where the arrest may be made, to answer the charge
77 or complaint and affidavit, and a certified copy of the sworn
78 charge or complaint and affidavit upon which the warrant is
79 issued shall be attached to the warrant.

80 (e) The arrest of a person may be lawfully made also by
81 any peace officer, or a private person, without a warrant,
82 upon reasonable information that the accused stands
83 charged in the courts of a state with a crime punishable by
84 death or by imprisonment for a term exceeding one year, but
85 when so arrested the accused must be taken before a judge
86 or magistrate with all practicable speed, and complaint must
87 be made against him or her under oath setting forth the
88 ground for the arrest as in the preceding section and
89 thereafter his or her answer shall be heard as if he or she had
90 been arrested on a warrant. Correctional officers may,
91 additionally, make complaint against persons in their
92 custody for whom, they have a reasonable belief, stand
93 accused of crimes, punishable by death or confinement for
94 a term exceeding one year, in the courts of another state.

95 (f) If from the examination before the judge or
96 magistrate it appears that the person held is the person
97 charged with having committed the crime alleged and,
98 except in cases arising under §62-14A-2(g) of this code, that
99 he or she has fled from justice, the judge or magistrate must,
100 by a warrant reciting the accusation, commit him or her to
101 the county or regional jail for a time not exceeding 30 days,
102 and specified in the warrant, as will enable the arrest of the
103 accused to be made under a warrant of the Governor on a
104 requisition of the executive authority of the state having
105 jurisdiction of the offense, unless the accused give bail as
106 provided in subsection (g) of this section, or until he or she
107 shall be legally discharged.

108 (g) Unless the offense with which the prisoner is
109 charged is shown to be an offense punishable by death or
110 life imprisonment under the laws of the state in which it was
111 committed, a judge or magistrate in this state may admit the
112 person arrested to bail by bond, with sufficient sureties, and

113 in a sum as he or she considers proper, conditioned for his
114 or her appearance before him or her at a time specified in
115 the bond, and for his or her surrender, to be arrested upon
116 the warrant of the Governor of this state.

117 (h) If the accused is not arrested under warrant of the
118 Governor by the expiration of the time specified in the
119 warrant or bond, a judge or magistrate may discharge him
120 or her or may recommit him or her for a further period not
121 to exceed 60 days, or a judge or magistrate may again take
122 bail for his or her appearance and surrender as provided in
123 subsection (g) of this section, but within a period not to
124 exceed 60 days after the date of the new bond.

125 (i) If the prisoner is admitted to bail, and fails to appear
126 and surrender himself or herself according to the conditions
127 of his or her bond, the judge, or magistrate, by proper order,
128 shall declare the bond forfeited and order his or her
129 immediate arrest without warrant if he or she is within this
130 state. Recovery may be had on a bond in the name of the
131 state as in the case of other bonds given by the accused in
132 criminal proceedings within this state.

133 (j) If a criminal prosecution has been instituted against
134 the person under the laws of this state and is still pending,
135 the Governor, in his or her discretion, either may surrender
136 him or her on demand of the executive authority of another
137 state or hold him or her until he or she has been tried and
138 discharged or convicted and punished in this state:
139 *Provided*, That any person under recognizance to appear as
140 a witness in any criminal proceeding pending in this state
141 may in the discretion of the Governor be surrendered on
142 demand of the executive authority of another state or be held
143 until criminal proceeding pending in this state has been
144 determined: *Provided, however*, That any person who was
145 in custody upon any execution, or upon process in any suit,
146 at the time of being apprehended for a crime charged to have
147 been committed without the jurisdiction of this state, may
148 not be delivered up without the consent of the plaintiff in an
149 execution or suit, until the amount of the execution has been

150 paid, or until the person shall be otherwise discharged from
151 the execution or process.

152 (k) The guilt or innocence of the accused as to the crime
153 for which he or she is charged may not be inquired into by
154 the Governor or in any proceeding after the demand for
155 extradition accompanied by a charge of crime in legal form
156 as provided in this article has been presented to the
157 Governor, except as it may be involved in identifying the
158 person held as the person charged with the crime.

§62-14A-5. Return of fugitive from this state.

1 (a) Whenever the Governor shall demand from the
2 executive authority of another state or from a judge of the
3 Superior Court of the District of Columbia the return to this
4 state of a person found in such state or the District of
5 Columbia who is charged with a crime, who has escaped
6 from confinement, who has been improperly released prior
7 to completion of his or her period of confinement, or who
8 violated the terms of his or her bail, probation, or parole, the
9 Governor shall issue a warrant for the person under the
10 Great Seal of West Virginia, affixed thereon by the
11 Secretary of State to an agent, commanding said agent to
12 receive the person so charged if delivered to him or her and
13 to transport the person to the proper officer of this state or a
14 county of this state in which the offense was committed.

15 (b) When the return to this state of a person charged with
16 a crime in this state is required, the prosecuting attorney
17 shall present to the Governor his or her written application
18 for a requisition for the return of the person charged, in
19 which application shall be stated the name of the person so
20 charged, the crime charged against him or her, the
21 approximate time, place, and circumstances of its
22 commission, the state in which he or she is believed to be,
23 including the location of the accused therein, at the time the
24 application is made, and certifying that, in the opinion of the
25 said prosecuting attorney, the ends of justice require the

26 arrest and return of the accused to this state for trial and that
27 the proceeding is not instituted to enforce a private claim.

28 (c) When the return to this state is required of a person
29 who has been previously convicted of a crime in this state
30 and has escaped from confinement, has been improperly
31 released prior to completion of his or her period of
32 confinement, violated the terms of his or her bail, probation,
33 or parole, the prosecuting attorney of the county in which
34 the offense was committed, the Parole Board, or the
35 Commissioner of the Division of Corrections and
36 Rehabilitation from which escape, improper release, or
37 violation of terms of bail, probation, or parole was
38 committed, shall present to the Governor a written
39 application for a requisition for the return of such person, in
40 which application shall be stated the name of the person, the
41 crime of which the person was convicted, the circumstances
42 of his or her escape from confinement, or of the breach of
43 the terms of his or her bail, probation, or parole, the state in
44 which the person is believed to be, including the location of
45 the person therein at the time application is made.

46 (d) The application shall be verified by affidavit, shall
47 be executed in duplicate and shall, pursuant to subsection
48 (b) of this section, be accompanied by either: Two certified
49 copies of the indictment returned or information and
50 affidavit filed, or, pursuant to subsection (c) of this section,
51 two certified copies of the complaint made to the judge or
52 justice, stating the offense with which the accused is
53 charged, or the judgment of conviction or of the sentence.
54 The prosecuting attorney, Parole Board, Commissioner of
55 the Division of Corrections and Rehabilitation, or sheriff
56 may also attach such further affidavits and other
57 identification documents in duplicate as he or she shall
58 deem proper to be submitted with such application. One
59 copy of the application, with the action of the Governor
60 indicated by endorsement thereon, and one of the certified
61 copies of the indictment, complaint, information, and
62 affidavits, or of the judgment of conviction or of the

63 sentence shall be filed in the office of the Secretary of State,
64 to remain of record in that office. The other copies of all
65 papers shall be forwarded with the Governor's requisition.

§62-14A-6. Immunity from service of civil process; waiver of extradition proceedings; nonwaiver of rights of state; trial on other charges after return.

1 (a) A person brought into this state by, or after waiver
2 of, extradition based on a criminal charge, shall not be
3 subject to service of personal process in civil actions until
4 the person has been convicted in the criminal proceedings,
5 or, if acquitted, until the person has had reasonable
6 opportunity to return to the state from which the person was
7 extradited.

8 (b) Any person arrested in this state charged with having
9 committed any crime in another state or alleged to have
10 escaped from confinement, or broken the terms of his or her
11 bail, probation or parole may waive the issuance and service
12 of the warrant provided for in §62-14A-3(a) and §62-14A-
13 3(d) of this code, and all other procedure incidental to
14 extradition proceedings, by executing or subscribing in the
15 presence of a judge of any court of record, within this state,
16 a writing which states that the person consents to return to
17 the demanding state: *Provided*, That before such waiver
18 shall be executed or subscribed by such person it shall be
19 the duty of such judge to inform such person of his or her
20 rights with respect to the issuance and service of a warrant
21 of extradition and with respect to obtaining a writ of habeas
22 corpus as provided for in §62-14A-4(a) of this code.

23 If and when such consent has been duly executed it shall
24 forthwith be forwarded to the Office of the Governor. The
25 judge shall direct the officer having such person in custody
26 to deliver forthwith such person to the duly accredited agent
27 or agents of the demanding state, and shall deliver or cause
28 to be delivered to such agent or agents a copy of such
29 consent: *Provided*, That nothing in this subsection shall be
30 deemed to limit the rights of the accused person to return

31 voluntarily and without formality to the demanding state,
32 nor shall this waiver procedure be deemed to be an exclusive
33 procedure or to limit the powers, rights, or duties of the
34 officers of the demanding state or of this state.

35 (c) *Prior waiver of extradition.* — Notwithstanding any
36 other provision of this code, a law-enforcement or
37 corrections agency in the State of West Virginia holding a
38 person who is charged by another jurisdiction with a
39 violation of his or her terms of probation, parole, bail, or
40 other form of conditional release in another jurisdiction
41 which is demanding the return of such person shall
42 immediately deliver the person to the duly authorized agent
43 of the demanding state, and without the requirement of a
44 Governor's warrant, if such person has previously executed
45 a waiver of extradition as a condition of his or her current
46 terms of probation, parole, bail, or other form of conditional
47 release in the demanding state and upon receipt of the
48 following documentation from the demanding state:

49 (1) A certified copy of the previously executed waiver
50 of extradition being held by the officials in the demanding
51 state or an electronically or electromagnetically transmitted
52 facsimile thereof;

53 (2) A certified copy of an order or warrant from the
54 demanding state seeking the return of the person or an
55 electronically or electromagnetically transmitted facsimile
56 thereof; and

57 (3) A photograph, fingerprints, or other evidence which
58 identifies the person held by the law-enforcement or
59 corrections agency as the person who signed the waiver of
60 extradition and who is named in the order or warrant, or an
61 electronically or electromagnetically transmitted facsimile
62 thereof.

63 (d) Nothing in this article contained shall be deemed to
64 constitute a waiver by this state of its right, power, or
65 privilege to try such demanded person for an offense

66 committed within this state, or of its right, power, or
67 privilege to regain custody of such person by extradition
68 proceedings or otherwise for the purpose of trial, sentence,
69 or punishment for any offense committed within this state,
70 nor shall any proceedings under this article which result in,
71 or fail to result in, extradition, be deemed a waiver by this
72 state of any of its rights, privileges, or jurisdiction in any
73 way whatsoever.

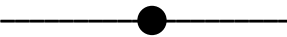
74 (e) After a person has been brought back to this state by,
75 or after waiver of, extradition proceedings, the person may
76 be tried in this state for any offense which the person may
77 be charged with having committed here as well as that
78 specified in the requisition for his or her extradition.

79 (f) Nothing in this section shall be construed to limit the
80 authority of the Governor, at his or her own instance, to
81 refuse to honor an extradition demand from another
82 jurisdiction.

§62-14A-7. How costs paid; complainant responsible for.

1 When the punishment of the crime shall be the
2 confinement of the criminal in the penitentiary, expenses
3 incurred shall be paid from funds available to the Division
4 of Corrections and Rehabilitation. In all other cases such
5 expenses shall be paid out of the county treasury of the
6 county wherein the crime is alleged to have been
7 committed.

8 The complainant in each case is answerable for all the
9 actual costs and charges, and for the support in prison of any
10 person so committed; and, if the charge for his or her
11 support in prison shall not be paid when demanded, the
12 jailer may discharge such person from prison.



CHAPTER 81

**(Com. Sub. for H. B. 2907 - By Delegates Steele,
Miller, Caputo and Maynard)
(By Request of the Department of Military Affairs and
Public Safety)**

[Passed March 6, 2019; in effect from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §62-7-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §62-7-10a, all relating to commitment order forms; providing forms for state correctional facility and jail commitments; requiring use of statutory forms after July 1, 2019; requiring magistrate court and circuit court clerks immediately provide judicially entered orders to the Division of Corrections and Rehabilitation; requiring that orders sent to prisons must be signed by the circuit judge with jurisdiction over the matter; requiring that orders sent to jails must be signed by the circuit court judge or magistrate with jurisdiction over the matter; acknowledging that the costs of incarceration in jail pending transfer to a state correctional facility shall be paid by the Commissioner from the calendar date following the date of the conviction forward as of July 1, 2019; clarifying the method of transmittal of commitment orders; and establishing an internal effective date.

Be it enacted by the Legislature of West Virginia:

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 7. EXECUTION OF SENTENCES; STAYS.

§62-7-10. Prison commitment order.

1 The clerk of a circuit court in which a person is
2 sentenced to serve a period of incarceration in a state prison

3 shall transmit to the Commissioner of the Division of
 4 Corrections and Rehabilitation a certified commitment
 5 order in the form provided for in this section. A person may
 6 not be committed to a prison unless the commitment order
 7 is signed by the circuit judge with jurisdiction over the
 8 matter. The amendments to this section enacted during the
 9 2019 regular session of the Legislature are effective July 1,
 10 2019.

11 IN THE CIRCUIT COURT OF
 12 _____ COUNTY, WEST VIRGINIA

13 State of West Virginia

14 v. circuit court Case No. _____

15 Defendant: _____

16 DOB: _____ SSN: XXX-XX-_____

17 Gender: _____ Male/_____ Female

18 WEST VIRGINIA DIVISION OF CORRECTIONS AND
 19 REHABILITATION CERTIFIED PRISON COMMITMENT
 20 ORDER

21 On the _____ day of _____, 20____, the
 22 State of West Virginia, by
 23 _____, and the
 24 defendant appeared in person and with
 25 counsel, _____.

26 The defendant has been convicted of the following
 27 offense(s):

28 _____

29 The defendant is committed to the custody of the
 30 Commissioner of Corrections and Rehabilitation for a period of:

31 _____.

32 Conviction Date: _____ Sentence Date:
33 _____

34 Effective Sentence Date: _____ Resentence Date: _____
35 Consecutive to: _____ Concurrent with:

36 _____

37 Credit for Jail/Prison Time Served: _____ days Credit for
38 Home Incarceration: _____ days

39 Credit for Home Incarceration Parole: _____ days Other
40 NonPenal Credit: _____ days

41 Additionally, the court finds:

42 _____

43 The defendant shall be transported to and held in a
44 facility under the control of the Commissioner of the
45 Division of Corrections and Rehabilitation. The court
46 further orders that the cost of incarceration in the jail
47 pending transfer shall be paid by the Commissioner
48 consistent with the provisions of §15A-3-16 of this code.

49 Special Instructions:

50 _____

51 It is further ordered that the Circuit Clerk shall
52 immediately transmit a certified copy of this commitment
53 order to the Central Office Inmate Records Manager of the
54 Division of Corrections and Rehabilitation by facsimile at
55 (fax number), by email at (email address) or other electronic
56 transmission, or by mail at (street address).

57 Enter this _____ day of _____, 2____.

58 _____

59 Circuit Judge

§62-7-10a. Jail commitment order.

1 The clerk of a circuit court or magistrate court in which
 2 a person is sentenced to serve a period of incarceration in a
 3 jail facility under the control of the Commissioner of
 4 Corrections and Rehabilitation shall transmit to the
 5 Commissioner of the Division of Corrections and
 6 Rehabilitation a certified commitment order in the form
 7 provided for in this section. A person may not be committed
 8 to a jail unless the commitment order is signed by the circuit
 9 court judge or magistrate with jurisdiction over the matter.
 10 The amendments to this section enacted during the 2019
 11 regular session of the Legislature are effective on July 1,
 12 2019.

13 IN THE CIRCUIT/MAGISTRATE COURT OF
 14 _____ COUNTY, WEST VIRGINIA

15 State of West Virginia

16 v. circuit/magistrate court Case No. _____

17 Defendant: _____

18 DOB: _____ SSN: XXX-XX-_____

19 Gender: _____ Male/ _____ Female

20 WEST VIRGINIA DIVISION OF CORRECTIONS AND
 21 REHABILITATION CERTIFIED JAIL COMMITMENT
 22 ORDER

23 On the _____ day of _____, 20____, the
 24 State of West Virginia, by _____,
 25 and the defendant appeared in person and with
 26 counsel, _____.

27 The defendant has been convicted of the following
 28 offense(s):

29 _____

30 The defendant is committed to the custody of the
31 Commissioner of Corrections and Rehabilitation for a period of:

32 _____.

33 Conviction Date: _____ Sentence Date: _____

34 Effective Sentence Date: _____ Resentence Date:

35 _____ Consecutive to: _____ Concurrent with:

36 _____

37 Credit for Time Served: _____ days Credit for Home

38 Incarceration: _____ days

39 Credit for Home Incarceration Parole: _____ days Other

40 NonPenal Credit: _____ days

41 Additionally, the court finds:

42 _____

43 The defendant shall be transported to and held in a jail facility
44 for the prescribed period of confinement in accordance with law.
45 The court further orders that the cost of incarceration of
46 misdemeanants sentenced to confinement in a jail shall be paid in
47 accordance with the provisions of §15A-3-16 of this code.

48 Special Instructions:

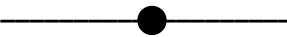
49 _____

50 It is further ordered that the Circuit Clerk or Magistrate Court
51 Clerk shall immediately transmit a certified copy of this
52 commitment order to the Central Office Inmate Records Manager
53 of the Division of Corrections and Rehabilitation by facsimile at
54 (fax number), by email at (email address) or other electronic
55 transmission, or by mail at (street address).

56 Enter this _____ day of _____, 2____.

57 _____

58 Circuit Judge/Magistrate



CHAPTER 82

(Com. Sub. for H. B. 3057 - By Delegate Shott)

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

AN ACT to amend and reenact §62-15-9a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §62-15B-1 and §62-15B-2, all relating generally to drug courts; removing certain restrictions on Drug Court Participation Fund expenditures; providing for disposition of moneys from said fund at the end of a fiscal year; permitting the Supreme Court of Appeals of West Virginia to create a family drug treatment court pilot program; permitting the implementation of a family drug treatment court pilot program in at least four circuits; restricting family drug treatment courts to individuals with substance use disorders who are involved in a child abuse and neglect case; permitting the Supreme Court of Appeals of West Virginia provide oversight, technical assistance and training; establishing a state family drug treatment court advisory committee; establishing a local family drug treatment court advisory committee; requiring each local family drug treatment court advisory committee to establish criteria for the eligibility and participation of adult responders who have been adjudicated to be an abusive or neglectful parent and who have been granted a post-adjudicatory improvement period and who have a substance use disorder; prohibiting certain respondents from being eligible for participation in a family drug treatment court; and providing that participation by an adult respondent in a family drug treatment court shall be voluntary and made pursuant only to a written agreement by and between the adult respondent and the department with the concurrence of the court.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY
AND TREATMENT ACT.**

§62-15-9a. Adult Drug Court Participation Fund.

1 (a) The special revenue fund created within the State
2 Treasury designated the Adult Drug Court Participation
3 Fund to be administered by the West Virginia Supreme
4 Court of Appeals is hereby continued. The fund shall consist
5 of moneys received from individuals participating in an
6 adult drug court program.

7 (b) All moneys collected by the Administrator of the
8 Supreme Court of Appeals for participation in the court's
9 adult drug court program shall be deposited into the Adult
10 Drug Court Participation Fund. Any moneys remaining in the
11 fund at the end of a fiscal year shall remain in the fund and
12 be available for expenditure during the ensuing fiscal year.

13 (c) All moneys deposited into the State Treasury and
14 credited to the Adult Drug Court Participation Fund shall be
15 used to pay the costs associated with maintaining and
16 administering the court's adult drug court programs.

ARTICLE 15B. FAMILY DRUG TREATMENT COURT ACT.

**§62-15B-1. Oversight and implementation of family drug
treatment courts.**

1 (a) The Supreme Court of Appeals of West Virginia
2 may implement a Family Drug Treatment Court pilot
3 program in at least four circuits.

4 (b) Family drug treatment courts are specialized court
5 dockets within the existing structure of West Virginia's
6 court system offering judicial monitoring of intensive
7 treatment and strict supervision of individuals with
8 substance use disorder involved in a child abuse and neglect
9 case pursuant to §49-4-601, *et. seq.*

10 (c) The Supreme Court of Appeals of West Virginia
11 may:

12 (1) Provide oversight for the distribution of funds for
13 family drug treatment courts;

14 (2) Provide technical assistance to family drug treatment
15 courts;

16 (3) Provide training for judges who preside over family
17 drug treatment courts;

18 (4) Provide training to the providers of administrative,
19 case management, and treatment services to family drug
20 treatment courts; and

21 (5) Monitor the completion of evaluations of the
22 effectiveness and efficiency of family drug treatment courts
23 in the state.

24 (d) A state family drug treatment court advisory
25 committee shall be established to:

26 (1) Evaluate and recommend standards for the planning
27 and implementation of family drug treatment courts;

28 (2) Assist in the evaluation of their effectiveness and
29 efficiency;

30 (3) Encourage and enhance cooperation among agencies
31 that participate in their planning and implementation; and

32 (4) Report by January 1, annually, to the Legislative
33 Oversight Commission on Health and Human Resources
34 Accountability regarding legislation to enhance family drug
35 treatment courts.

36 (e) The committee shall be chaired by the Chief Justice
37 of the Supreme Court of Appeals of West Virginia or his or
38 her designee and shall include a circuit court judge who
39 presides over a family drug treatment court; the Director of
40 the Office of Drug Control Policy or the executive assistant

41 to the director; Cabinet Secretary of the Department of
42 Health and Human Resources or his or her designee; the
43 commissioners or their designee of the following bureaus:
44 the Bureau for Children and Families; the Bureau for Public
45 Health; and the Bureau for Behavioral Health; the Executive
46 Director of the West Virginia Prosecuting Attorneys
47 Institute or his or her designee; the Executive Director of the
48 West Virginia Public Defender Services or his or her
49 designee; and the Executive Director of West Virginia
50 CASA Association or his or her designee.

51 (f) Each circuit selected to establish a family drug
52 treatment court shall establish and maintain a local family
53 drug treatment court advisory committee. Each advisory
54 committee shall ensure quality, efficiency, and fairness in
55 the planning, implementation, and operation of the family
56 drug treatment court or courts that serve the jurisdiction or
57 combination of jurisdictions. Advisory committee
58 membership shall include, but shall not be limited to the
59 following people or their designees:

60 (1) The family drug treatment court judge;

61 (2) The prosecuting attorney of the county;

62 (3) The public defender or a member of the county bar
63 who represents individuals in child abuse and neglect cases;

64 (4) The Community Service Manager of the Bureau of
65 Children and Families of the Department of Health and
66 Human Resources;

67 (5) A court appointed special advocate, as applicable;
68 and

69 (6) Any other individuals selected by the family drug
70 treatment court advisory committee.

§62-15B-2. Establish eligibility and policies procedures.

1 (a) Each local family drug treatment court advisory
2 committee shall establish criteria for the eligibility and
3 participation of adult respondents who have been

4 adjudicated an abusing or neglecting parent pursuant to §49-
5 4-601(i) and who have been granted a post-adjudicatory
6 improvement period pursuant to §49-4-610(2) and who
7 have a substance use disorder. Adult respondents who have
8 been adjudicated for such abuse that the department is not
9 required to make reasonable efforts to preserve the family
10 as defined in §49-4-604(b)(7) shall not be eligible for
11 participation in any family drug treatment court.

12 (b) Participation by an adult respondent in a family drug
13 treatment court shall be voluntary and made pursuant only to a
14 written agreement into by and between the adult respondent
15 and the department with concurrence of the court.

CHAPTER 83

**(Com. Sub. for H. B. 2740 - By Delegates Shott,
Harshbarger and Mandt)**

[Passed March 1, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §42-1-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §42-1-11 and §42-1-12, all relating to inheritance; barring a parent from inheriting from or through a child of the parent in certain instances; and permitting a child to inherit from a parent in certain instances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DESCENT.

§42-1-1. General definitions.

1 Subject to additional definitions contained in the
2 subsequent articles that are applicable to specific articles,

3 parts or sections, and unless the context otherwise requires
4 in this code:

5 (1) “Agent” includes an attorney-in-fact under a durable
6 or nondurable power of attorney, an individual authorized
7 to make decisions concerning another’s health care and an
8 individual authorized to make decisions for another under a
9 natural death act.

10 (2) “Beneficiary” as it relates to a trust beneficiary,
11 includes a person who has any present or future interest,
12 vested or contingent, and also includes the owner of an
13 interest by assignment or other transfer; as it relates to a
14 charitable trust, includes any person entitled to enforce the
15 trust; as it relates to a “beneficiary of a beneficiary
16 designation”, refers to a beneficiary of an account with POD
17 designation, of a security registered in beneficiary form
18 (TOD) or other nonprobate transfer at death; and, as it
19 relates to a “beneficiary designated in a governing
20 instrument”, includes a grantee of a deed, a devisee, a trust
21 beneficiary, a beneficiary of a beneficiary designation or a
22 person in whose favor a power of attorney or a power held
23 in any individual, fiduciary or representative capacity is
24 exercised.

25 (3) “Court” means the county commission or branch in
26 this state having jurisdiction in matters relating to the affairs
27 of decedents.

28 (4) “Conservator” means a person who is appointed by
29 a court to manage the estate of a protected person.

30 (5) “Descendant” of an individual means all of his or her
31 descendants of all generations, with the relationship of
32 parent and child at each generation being determined by the
33 definition of child and parent contained in this code.

34 (6) “Devise” when used as a noun, means a testamentary
35 disposition of real or personal property and, when used as a
36 verb, means to dispose of real or personal property by will.

37 (7) “Devisee” means a person designated in a will to
38 receive a devise. In the case of a devise to an existing trust
39 or trustee, or to a trustee on trust described by will, the trust
40 or trustee is the devisee and the beneficiaries are not
41 devisees.

42 (8) “Distributee” means any person who has received
43 property of a decedent from his or her personal
44 representative other than as a creditor or purchaser. A
45 testamentary trustee is a distributee only to the extent of
46 distributed assets or increment thereto remaining in his or
47 her hands. A beneficiary of a testamentary trust to whom the
48 trustee has distributed property received from a personal
49 representative is a distributee of the personal representative.
50 For the purposes of this provision, “testamentary trustee”
51 includes a trustee to whom assets are transferred by will, to
52 the extent of the devised assets.

53 (9) “Estate” includes the property of the decedent, trust
54 or other person whose affairs are subject to this code as
55 originally constituted and as it exists from time to time
56 during administration.

57 (10) “Exempt property” means that property of a
58 decedent’s estate which is provided for in section forty-
59 eight, article VI of the Constitution.

60 (11) “Fiduciary” includes a personal representative,
61 guardian, conservator and trustee.

62 (12) “Foreign personal representative” means a personal
63 representative appointed by another jurisdiction.

64 (13) “Formal proceedings” means proceedings
65 conducted before a judge with notice to interested persons.

66 (14) “Governing instrument” means a deed, will, trust,
67 insurance or annuity policy, account with POD designation,
68 security registered in beneficiary form (TOD), pension,
69 profit-sharing, retirement or similar benefit plan, instrument
70 creating or exercising a power of appointment or a power of

71 attorney or a donative, appointive or nominative instrument
72 of any other type.

73 (15) “Guardian” means a person who has qualified as a
74 guardian of a minor or incapacitated person pursuant to
75 testamentary or court appointment, but excludes one who is
76 merely a guardian ad litem.

77 (16) “Heirs” means persons, including the surviving
78 spouse and the state, who are entitled under the statutes of
79 intestate succession to the property of a decedent.

80 (17) “Informal proceedings” mean those conducted
81 without notice to interested persons by an officer of the
82 court acting as a registrar for probate of a will or
83 appointment of a personal representative.

84 (18) “Interested person” includes heirs, devisees,
85 children, spouses, creditors, beneficiaries and any others
86 having a property right in or claim against a trust estate or
87 the estate of a decedent, ward or protected person. It also
88 includes persons having priority for appointment as
89 personal representative and other fiduciaries representing
90 interested persons. The meaning as it relates to particular
91 persons may vary from time to time and must be determined
92 according to the particular purposes of, and matter involved
93 in, any proceeding.

94 (19) “Issue” of a person means descendant as defined in
95 subdivision (5) of this section.

96 (20) “Joint tenants with the right of survivorship” and
97 “community property with the right of survivorship”
98 includes coowners of property held under circumstances
99 that entitle one or more to the whole of the property on the
100 death of the other or others, but excludes forms of
101 coownership registration in which the underlying ownership
102 of each party is in proportion to that party’s contribution.

103 (21) “Lease” includes an oil, gas or other mineral lease.

104 (22) "Letters" includes letters testamentary, letters of
105 guardianship, letters of administration and letters of
106 conservatorship.

107 (23) "Minor" means a person who is under 18 years of
108 age.

109 (24) "Mortgage" means any deed of trust, conveyance,
110 agreement or arrangement in which property is encumbered
111 or used as security.

112 (25) "Nonresident decedent" means a decedent who was
113 domiciled in another jurisdiction at the time of his or her
114 death.

115 (26) "Parent" includes any person entitled to take, or
116 who would be entitled to take if the child died without a will,
117 as a parent under this code by intestate succession from the
118 child whose relationship is in question and excludes any
119 person who is only a stepparent, foster parent or
120 grandparent. However, a parent is barred from inheriting
121 from or through a child of the parent pursuant to the
122 provisions of §42-1-11 of this code.

123 (27) "Payor" means a trustee, insurer, business entity,
124 employer, government, governmental agency or
125 subdivision or any other person authorized or obligated by
126 law or a governing instrument to make payments.

127 (28) "Person" means an individual or an organization.

128 (29) "Personal representative" includes executor,
129 administrator, successor personal representative, special
130 administrator and persons who perform substantially the
131 same function under the law governing their status.
132 "General personal representative" excludes special
133 administrator.

134 (30) "Petition" means a written request to the court for
135 an order after notice.

136 (31) “Proceeding” includes action at law and suit in
137 equity.

138 (32) “Property” includes both real and personal property
139 or any interest therein and means anything that may be the
140 subject of ownership.

141 (33) “Security” includes any note, stock, treasury stock,
142 bond, debenture, evidence of indebtedness, certificate of
143 interest or participation in an oil, gas or mining title or lease
144 or in payments out of production under such a title or lease,
145 collateral trust certificate, transferable share, voting trust
146 certificate or, in general, any interest or instrument
147 commonly known as a security or any certificate of interest
148 or participation, any temporary or interim certificate, receipt
149 or certificate of deposit for, or any warrant or right to
150 subscribe to or purchase, any of the foregoing.

151 (34) “Settlement” in reference to a decedent’s estate,
152 includes the full process of administration, distribution and
153 closing.

154 (35) “State” means a state of the United States, the
155 District of Columbia, the Commonwealth of Puerto Rico or
156 any territory or insular possession subject to the jurisdiction
157 of the United States.

158 (36) “Successor personal representative” means a
159 personal representative, other than a special administrator,
160 who is appointed to succeed a previously appointed
161 personal representative.

162 (37) “Successors” means persons, other than creditors,
163 who are entitled to property of a decedent under his or her
164 will or this code.

165 (38) “Survive” means that an individual has neither
166 predeceased an event, including the death of another
167 individual, nor is deemed to have predeceased an event. The
168 term includes its derivatives, such as “survives”,
169 “survived”, “survivor” and “surviving”.

170 (39) “Surviving spouse” means the person to whom the
171 decedent was married at the time of the decedent’s death.

172 (40) “Testacy proceeding” means a proceeding to
173 establish a will or determine intestacy.

174 (41) “Testator” includes an individual of either sex.

175 (42) “Trust” includes an express trust, private or
176 charitable, with additions thereto, wherever and however
177 created. The term also includes a trust created or determined
178 by judgment or decree under which the trust is to be
179 administered in the manner of an express trust. The term
180 excludes other constructive trusts and excludes resulting
181 trusts, conservatorships, personal representatives and
182 custodial arrangements, including that relating to gifts or
183 transfers to minors, dealing with special custodial situations,
184 business trusts providing for certificates to be issued to
185 beneficiaries.

186 (43) “Trustee” includes an original, additional or
187 successor trustee, whether or not appointed or confirmed by
188 court.

189 (44) “Will” includes codicil and any testamentary
190 instrument that merely appoints an executor, revokes or revises
191 another will, nominates a guardian or expressly excludes or
192 limits the right of an individual or class to succeed to property
193 of the decedent passing by intestate succession.

§42-1-11. When a parent may not inherit from a child.

1 (a) A parent is barred from inheriting from or through a
2 child of the parent if: (1) The parent’s parental rights were
3 terminated by court order and the parent-child relationship
4 has not been judicially reestablished; or (2) the child died
5 before reaching 18 years of age and there is clear and
6 convincing evidence that immediately before the child’s
7 death the parental rights of the parent could have been
8 terminated under the law of this state other than this article
9 on the basis of nonsupport, abandonment, abuse, neglect, or
10 other actions or inactions of the parent toward the child.

11 (b) For the purpose of intestate succession from or
 12 through the deceased child, a parent who is barred from
 13 inheriting under this section is treated as if the parent
 14 predeceased the child.

§42-1-12. When a child may inherit from a parent who has been barred from inheritance.

1 If a parent is barred from inheriting under the provisions
 2 of W.Va. Code §42-1-11, the child may still inherit from or
 3 through the barred parent as long as a parent-child
 4 relationship does not exist between the child as an adoptee
 5 with another person as the adoptee's adoptive parent.



CHAPTER 84

**(S. B. 664 - By Senators Azinger, Baldwin, Beach,
 Boso, Clements, Hardesty, Jeffries, Lindsay,
 Maynard, Romano, Smith, Woelfel and Trump)**

[Passed March 5, 2019; in effect from passage.]
 [Approved by the Governor on March 26, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
 by adding thereto a new section, designated §48-2-406,
 relating to authorizing certain members of the federal
 judiciary to perform marriages.

Be it enacted by the Legislature of West Virginia:

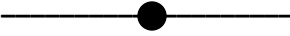
ARTICLE 2. MARRIAGES.

PART IV. MARRIAGE CEREMONY.

§48-2-406. Federal judges authorized to perform marriages.

1 Notwithstanding any provision of this code to the
 2 contrary, active and senior status judges appointed under

3 Article III of the United States Constitution and federal
4 magistrate-judges, who are residents of this state, are
5 authorized to perform marriages in any county of this state.



CHAPTER 85

**(S. B. 153 - By Senators Jeffries, Stollings, Lindsay,
Clements, Smith, Baldwin, Plymale, Ihlenfeld,
Hamilton and Boso)**

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

AN ACT to amend and reenact §31-15A-10 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Infrastructure and Jobs Development Council; increasing the percentage of the infrastructure fund that may be used for grants; providing authority to transfer additional funds designated to loans on to the grant program under certain circumstances; clarifying how funding assistance may be spent; and increasing the cap on annual spending that may be made on the preapplication process to project sponsors.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-10. Recommendations by council for expenditures of funds by loan, grant, or for engineering assistance.

1 (a) To further accomplish the purpose and intent of this
2 article, the Water Development Authority shall use the
3 moneys in the Infrastructure Fund created pursuant to §31-
4 15A-9 of this code, upon receipt of one or more
5 recommendations from the council pursuant to §31-15A-5
6 of this code, to make loans, with or without interest, loan

7 guarantees, or grants and to provide other assistance,
8 financial, technical, or otherwise, to finance all or part of the
9 costs of infrastructure projects or projects to be undertaken
10 by a project sponsor: *Provided*, That any moneys disbursed
11 from the Infrastructure Fund in the form of grants shall not
12 exceed 25 percent of the total funds available for the funding
13 of projects: *Provided, however*, That if on January 1 of any
14 year, the amount available for grants in any congressional
15 district is below \$150,000, the council may convert up to 30
16 percent of the funds available for loans in that congressional
17 district to be used for grants within the congressional
18 district, if and when needed to make an award. No loan, loan
19 guarantee, grant, or other assistance shall be made or
20 provided except upon a determination by the council that
21 the loan, loan guarantee, grant, or other assistance and the
22 manner in which it will be provided are necessary or
23 appropriate to accomplish the purposes and intent of this
24 article, based upon an application submitted to the council:
25 *Provided further*, That no grant shall be made to a project
26 sponsor that is not a governmental agency or a not-for-profit
27 corporation under the provisions of Section 501(c) of the
28 Internal Revenue Code of 1986, as amended. Applications
29 for loans, loan guarantees, grants, or other assistance may
30 be submitted by a project sponsor for one or more
31 infrastructure projects on preliminary application forms
32 prepared by the council pursuant to §31-15A-4 of this code.
33 Any recommendation of the council approving a loan, loan
34 guarantee, grant, or other assistance shall include a finding
35 and determination by the council that the requirements of
36 this section have been met. The council shall base any
37 decisions to loan money for projects to project sponsors
38 pursuant to this article solely on the need of the project
39 sponsors.

40 (b) The council has the authority in its sole discretion to
41 make grants to project sponsors if it finds that: (1) The level
42 of rates for the users would otherwise be an unreasonable
43 burden given the users' likely ability to pay; or (2) the
44 absence of a sufficient number of users prevents funding of

45 the project except through grants: *Provided*, That no project
46 sponsor shall receive infrastructure grant money in an
47 amount in excess of 50 percent of the total cost of the
48 project. Therefore, the council may consider the economic
49 or financial conditions of the area to be served. As a
50 condition for receipt of a grant under this subsection, the
51 council may require, in addition to any other conditions, that
52 the applicant pursue other state or federal grant or loan
53 programs. Upon a recommendation by the council, the
54 Water Development Authority shall provide the grant in
55 accordance with the recommendation. The council shall
56 develop criteria to be considered in making grants to project
57 sponsors which shall require consideration of the economic
58 or financial conditions of the area to be served and the
59 availability of other funding sources. The council shall
60 adopt procedural rules regarding the manner in which grants
61 will be awarded in conformity with this section. The
62 procedural rules shall be adopted pursuant to §29A-3-1 *et*
63 *seq.* of this code.

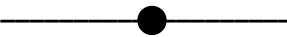
64 (c) Notwithstanding any other provision of this article
65 to the contrary, the council shall apply a mandatory
66 minimum end user utility rate that must be met by the
67 project sponsor before funding assistance may be awarded.
68 The mandatory minimum end utility rate shall be based
69 upon a uniform statewide percentage of the median
70 household income in a particular geographic area and said
71 rate shall not exceed six tenths of one percent. Funding
72 assistance made from the Infrastructure Fund for loans and
73 grants to projects, after transfers required to make the state
74 match for the water and wastewater revolving loan
75 programs pursuant to §22C-2-1, *et seq.* and §16-13C-1, *et*
76 *seq.*, of this code, shall be provided by the council on a pro
77 rata basis divided equally among the congressional districts
78 of this state as delineated in accordance with §1-2-3 of this
79 code: *Provided*, That infrastructure projects as defined in
80 §31-15A-2(l) of this code shall not be subject to pro rata
81 distribution. When determining median household income
82 of a geographic area of the project to be served, the council

83 shall consider any surveys of the income of the households
84 that will be served by the project.

85 (d) No loan or grant funds may be made available for a
86 project if the project to be funded will provide subsidized
87 services to certain users in the service area of the project.

88 (e) Notwithstanding any other provision of this article
89 to the contrary, engineering studies and requirements
90 imposed by the council for preliminary applications shall
91 not exceed those engineering studies and requirements
92 which are necessary for the council to determine the
93 economic feasibility of the project. If the council determines
94 that the engineering studies and requirements for the
95 preapplication would impose an undue hardship on any
96 project sponsor, the council may provide funding assistance
97 to project sponsors to defray the expenses of the
98 preapplication process from moneys available in the
99 Infrastructure Fund for making loans: *Provided*, That the
100 council may only provide funding assistance in an amount
101 equal to \$5,000 or 50 percent of the total preapplication cost
102 of the project, whichever amount is greater. If the project is
103 ultimately approved for a loan by the council, the amount of
104 funding assistance provided to the project sponsor for the
105 preapplication process shall be included in the total amount
106 of the loan to be repaid by the project sponsor. If the project
107 is not ultimately approved by the council, then the amount
108 of funding assistance provided to the project sponsor will be
109 considered a grant by the council and the total amount of the
110 assistance shall be forgiven. In no event may the amount of
111 funding assistance provided to all project sponsors exceed,
112 in the aggregate, \$500,000 annually.

113 (f) The council shall report to the Governor, the Speaker
114 of the House of Delegates, and the President of the Senate
115 during each regular and interim session of the Legislature,
116 on its activities and decisions relating to distribution or
117 planned distribution of grants and loans under the criteria to
118 be developed pursuant to this article.



CHAPTER 86

(S. B. 421 - By Senators Smith, Sypolt, Cline and Maroney)

[Passed March 7, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §5B-2E-10 of the Code of West Virginia, 1931, as amended, relating to annual legislative review of the economic development tax credit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2E. WEST VIRGINIA TOURISM DEVELOPMENT ACT.

§5B-2E-10. Legislative review.

1 The Development Office shall report annually to the
2 Joint Commission on Economic Development by December
3 1 of each year on the number of applications received from
4 eligible companies as provided in this article, the identity of
5 each eligible company, whether the eligible company is
6 seeking the tourism development project credit or the
7 tourism development expansion project credit, or both, a
8 description of the tourism development projects to which
9 the credit may be applied, the status of each application, the
10 number of projects approved, the status of each project,
11 whether the projects are certified multiple year projects, the
12 amount of credit allowed, and the amount of consumers
13 sales and service tax generated by each project.

●

CHAPTER 87

(S. B. 667 - By Senator Maynard)

[Passed March 5, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-2-17, relating to creating the West Virginia Motorsport Committee; setting forth who serves on the committee; setting forth its duties; requiring meetings and hearings; and requiring reports.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

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

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

3 (b) The committee consists of five members, including
4 its chairperson, appointed by the Governor to serve at his or
5 her will and pleasure.

6 (c) The Commissioner of Tourism and the Director of
7 the West Virginia Development Office shall also serve on
8 the committee, ex officio.

9 (d) The committee shall:

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

12 (2) Develop a strategy that creates further opportunities,
13 such as encouraging racing training schools, conducting

14 special events, and encouraging special events and the
15 construction of larger in-state racing facilities; and

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

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

21 (f) Members of the committee will receive no
22 compensation but are entitled to reimbursement for mileage
23 expenses while attending meetings of the committee to the
24 extent that funds are available through the Development
25 Office.

26 (g) The committee shall report on the status of its duties,
27 goals, accomplishments and recommendations to the
28 Legislature on at least an annual basis.



CHAPTER 88

**(Com. Sub. for H. B. 2550 - By Delegates Capito,
Nelson, Queen and Fast)**

[Passed March 7, 2019; in effect ninety days from passage.]

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-8-1, §5B-8-2, §5B-8-3, §5B-8-4, and §5B-8-5, all relating to creating a matching program for the Small Business Innovation Research Program and the Small Business Technology Transfer Program; providing that matching funds are to be paid from the Entrepreneurship and Innovation Investment Fund; defining terms; defining eligibility; providing terms of

the grant; defining the application process; and providing for legislative rulemaking.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 8. SMALL BUSINESS INNOVATION RESEARCH
AND SMALL BUSINESS TECHNOLOGY TRANSFER
MATCHING FUNDS PROGRAM.**

§5B-8-1. Definitions.

1 When used in this article:

2 “Department” means the West Virginia Department of
3 Commerce.

4 “SBIR” means the Small Business Innovation Research
5 Program enacted under the Small Business Innovation
6 Development Act of 1982, Pub. L. 97-219, 15 U.S.C. §638.

7 “STTR” means the Small Business Technology
8 Transfer Program enacted under the Small Business
9 Technology Transfer Act of 1992, Pub. L. 102-564, 15
10 U.S.C §638.

11 “Small business” means a corporation, partnership,
12 limited liability company, statutory or common law
13 business trust, sole proprietorship, or individual, operating
14 a business for profit, which qualifies as a small business and
15 otherwise meets the requirements of the SBIR or STTR
16 programs.

17 “West Virginia-based business” means a business that
18 has its principal place of business in this state.

§5B-8-2. Creating a matching program.

1 The West Virginia Small Business Innovation Research
2 and Small Business Technology Transfer Matching Funds
3 Program is established. It shall be administered by the
4 department which is hereby authorized to promulgate
5 legislative rules governing the program. In order to foster

6 job creation and economic development in the state, the
7 department may provide grants to eligible small businesses
8 to match funds they receive from Small Business Innovation
9 Research or Small Business Technology Transfer Phase I
10 and Phase II awards. The department will pay the grants
11 from the fund known as the “Entrepreneurship and
12 Innovation Investment Fund” created pursuant to §5B-2-16
13 of this code.

§5B-8-3. Eligibility.

1 In order to be eligible for a grant under this article, a
2 small business must satisfy all of the following conditions:

3 (1) The small business must be a for-profit, West
4 Virginia-based business;

5 (2) For the Phase I and/or Phase II Matching program
6 the small business must have received a SBIR/STTR Phase
7 I or SBIR/STTR Phase II award from a participating federal
8 agency in response to a specific federal solicitation. To
9 receive the full match for the Phase I award, the small
10 business must also have submitted a final Phase I report,
11 demonstrated that the sponsoring agency has an interest in
12 a Phase II proposal, and submitted a Phase II proposal to the
13 agency; To receive the Phase II match, the small business
14 must have submitted the final progress report to the funding
15 agency;

16 (3) The small business must satisfy all federal
17 SBIR/STTR requirements;

18 (4) The small business shall not receive concurrent
19 funding support from other sources that duplicates the
20 purpose of this article;

21 (5) The small business must certify that at least 51
22 percent of the research described or to be described in the
23 federal SBIR/STTR Phase II proposal will be conducted in
24 this state and that the small business will remain a West

25 Virginia-based business for the duration of the SBIR/STTR
26 Phase II project; and

27 (6) The small business must demonstrate its ability to
28 conduct research in its SBIR/STTR Phase II proposal.

§5B-8-4. Application process.

1 (a) A small business shall apply, under oath, to the
2 department on forms prescribed by the department that
3 include at least the following:

4 (1) The name of the small business, the form of business
5 organization under which it is operated, and the names and
6 addresses of the principals and management of the small
7 business;

8 (2) For matching awards, notice of award from the
9 funding agency of the SBIR/STTR Phase I or Phase II
10 award;

11 (3) For matching awards, study section evaluation and
12 comments; and

13 (4) Any other information necessary for the department
14 to evaluate the application.

15 (b) The department shall review the application,
16 determine whether the applicant satisfies the eligibility
17 requirements, and determine whether to award matching
18 grants.

§5B-8-5. Grant terms.

1 (a) The department may award a “WV Phase Zero
2 Grant” of \$2500 upon submission of a Phase I SBIR/STTR
3 proposal or Fast track SBIR/STTR proposal. The WV Phase
4 Zero grant shall be remitted to the small business upon
5 notification from the granting agency of the receipt of a
6 submission for an SBIR/STTR Phase I or SBIR/STTR fast
7 track application. The small business must provide
8 satisfactory evidence to the department of the notification

9 of receipt. A small business may receive only one WV
10 Phase Zero Grant per year. A small business may receive
11 only one WV Phase Zero Grant with respect to each federal
12 proposal submission; resubmissions of unsuccessful
13 applications are not eligible. Over its lifetime, a small
14 business may receive a maximum of five WV Phase Zero
15 awards. A grant recipient may assign an award only upon
16 the prior written consent of the department.

17 (b) The department may award grants to match funds
18 received by a small business through a SBIR/STTR Phase I
19 proposal up to a maximum of \$100,000 paid in two
20 remittances. Fifty percent of the award under this subsection
21 shall be remitted to the small business upon receipt of the
22 SBIR/STTR Phase I award and an application to the
23 department for the funds. The remaining fifty percent of the
24 award under this subsection shall be remitted to the small
25 business upon submission by the small business of a Phase
26 II application to the funding agency, acceptance of the Phase
27 I report by the funding agency, and application to the
28 department for the funds. A small business may receive only
29 one grant under this subsection per year. A small business
30 may receive only one grant under this subsection with
31 respect to each federal proposal submission. Over its
32 lifetime, a small business may receive a maximum of five
33 awards under this subsection. A grant recipient may assign
34 the award only upon the prior written consent of the
35 department.

36 (c) The department may award grants to match the funds
37 received by a small business through a SBIR/STTR Phase
38 II proposal up to a maximum of \$100,000 per year for up to
39 two years, after application to the department. The second
40 remittance may be made to the small business on the one-
41 year anniversary of the first matching remittance under this
42 subsection, if applicant applies for the funds with
43 documentation from the agency indicating that the grant is
44 to continue for a second year. A small business may receive
45 only one grant under this subsection per year. A small
46 business may receive only one award under this subsection

47 with respect to each federal proposal submission. Over its
 48 lifetime, a small business may receive a maximum of five
 49 awards under this subsection. A grant recipient may assign
 50 the award only upon the prior written consent of the
 51 department.



CHAPTER 89

(Com. Sub. for S. B. 26 - By Senator Blair)

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

AN ACT to amend and reenact §18-7A-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-7B-2 of said code, all relating to permitting full-time employees of educational services cooperatives to participate in the State Teachers Retirement System; and permitting full-time employees of educational services cooperatives to participate in the State Teachers' Defined Contribution Retirement System.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

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

3 "Accumulated contributions" means all deposits and all
 4 deductions from the gross salary of a contributor plus
 5 regular interest.

6 “Accumulated net benefit” means the aggregate amount
7 of all benefits paid to or on behalf of a retired member.

8 “Actuarially equivalent” or “of equal actuarial value”
9 means a benefit of equal value computed upon the basis of
10 the mortality table and interest rates as set and adopted by
11 the retirement board in accordance with the provisions of
12 this article: *Provided*, That when used in the context of
13 compliance with the federal maximum benefit requirements
14 of Section 415 of the Internal Revenue Code, “actuarially
15 equivalent” shall be computed using the mortality tables and
16 interest rates required to comply with those requirements.

17 “Annuities” means the annual retirement payments for
18 life granted beneficiaries in accordance with this article.

19 “Average final salary” means the average of the five
20 highest fiscal year salaries earned as a member within the
21 last 15 fiscal years of total service credit, including military
22 service as provided in this article, or if total service is less
23 than 15 years, the average annual salary for the period on
24 which contributions were made: *Provided*, That salaries for
25 determining benefits during any determination period may
26 not exceed the maximum compensation allowed as adjusted
27 for cost of living in accordance with §5-10D-7 of this code
28 and Section 401(a)(17) of the Internal Revenue Code.

29 “Beneficiary” means the recipient of annuity payments
30 made under the retirement system.

31 “Contributor” means a member of the retirement system
32 who has an account in the Teachers Accumulation Fund.

33 “Deposit” means a voluntary payment to his or her
34 account by a member.

35 “Employer” means the agency of and within the state
36 which has employed or employs a member.

37 “Employer error” means an omission,
38 misrepresentation, or violation of relevant provisions of the

39 West Virginia Code, or of the West Virginia Code of State
40 Regulations, or the relevant provisions of both the West
41 Virginia Code and of the West Virginia Code of State
42 Regulations by the participating public employer that has
43 resulted in an underpayment or overpayment of
44 contributions required. A deliberate act contrary to the
45 provisions of this section by a participating public employer
46 does not constitute employer error.

47 “Employment term” means employment for at least 10
48 months, a month being defined as 20 employment days.

49 “Gross salary” means the fixed annual or periodic cash
50 wages paid by a participating public employer to a member
51 for performing duties for the participating public employer
52 for which the member was hired. Gross salary shall be
53 allocated and reported in the fiscal year in which the work
54 was done. Gross salary also includes retroactive payments
55 made to a member to correct a clerical error, or made
56 pursuant to a court order or final order of an administrative
57 agency charged with enforcing federal or state law
58 pertaining to the member’s rights to employment or wages,
59 with all retroactive salary payments to be allocated to and
60 considered paid in the periods in which the work was or
61 would have been done. Gross salary does not include lump
62 sum payments for bonuses, early retirement incentives,
63 severance pay, or any other fringe benefit of any kind
64 including, but not limited to, transportation allowances,
65 automobiles or automobile allowances, or lump sum
66 payments for unused, accrued leave of any type or character.

67 “Internal Revenue Code” means the Internal Revenue
68 Code of 1986, as it has been amended.

69 “Member” means any person who has accumulated
70 contributions standing to his or her credit in the State
71 Teachers Retirement System. A member shall remain a
72 member until the benefits to which he or she is entitled
73 under this article are paid or forfeited, or until cessation of
74 membership pursuant to §18-7A-13 of this code.

75 “Members of the administrative staff of the public
76 schools” means deans of instruction, deans of men, deans of
77 women, and financial and administrative secretaries.

78 “Members of the extension staff of the public schools”
79 means every agricultural agent, boys and girls club agent,
80 and every member of the agricultural extension staff whose
81 work is not primarily stenographic, clerical, or secretarial.

82 “New entrant” means a teacher who is not a present
83 teacher.

84 “Nonteaching member” means any person, except a
85 teacher member, who is regularly employed for full-time
86 service by: (A) Any county board of education or
87 educational services cooperative; (B) the State Board of
88 Education; (C) the Higher Education Policy Commission;
89 (D) the West Virginia Council for Community and
90 Technical College Education; or (E) a governing board, as
91 defined in §18B-1-2 of this code: *Provided*, That any person
92 whose employment with the Higher Education Policy
93 Commission, the West Virginia Council for Community
94 and Technical College Education, or a governing board
95 commences on or after July 1, 1991, is not considered a
96 nonteaching member.

97 “Plan year” means the 12-month period commencing on
98 July 1 and ending the following June 30 of any designated
99 year.

100 “Present member” means a present teacher or
101 nonteacher who is a member of the retirement system.

102 “Present teacher” means any person who was a teacher
103 within the 35 years beginning July 1, 1934, and whose
104 membership in the retirement system is currently active.

105 “Prior service” means all service as a teacher completed
106 prior to July 1, 1941, and all service of a present member
107 who was employed as a teacher and did not contribute to a

108 retirement account because he or she was legally ineligible
109 for membership during the service.

110 “Public schools” means all publicly supported schools,
111 including colleges and universities in this state.

112 “Refund beneficiary” means the estate of a deceased
113 contributor or a person he or she has nominated as
114 beneficiary of his or her contributions by written
115 designation duly executed and filed with the retirement
116 board.

117 “Regular interest” means interest at four percent
118 compounded annually, or a higher earnable rate if set forth
119 in the formula established in legislative rules, series seven
120 of the Consolidated Public Retirement Board, 162 CSR 7.

121 “Regularly employed for full-time service” means
122 employment in a regular position or job throughout the
123 employment term regardless of the number of hours worked
124 or the method of pay.

125 “Required beginning date” means April 1 of the
126 calendar year following the later of: (A) The calendar year
127 in which the member attains age 70 and one-half years; or
128 (B) the calendar year in which the member retires or ceases
129 covered employment under the system after having attained
130 the age of 70 and one-half years.

131 “Retirant” means any member who commences an
132 annuity payable by the retirement system.

133 “Retirement board” means the Consolidated Public
134 Retirement Board created pursuant to §5-10D-1 *et seq.* of
135 this code.

136 “Retirement system” means the State Teachers
137 Retirement System established by this article.

138 “Teacher member” means the following persons, if
139 regularly employed for full-time service: (A) Any person

140 employed for instructional service in the public schools of
141 West Virginia; (B) principals; (C) public school librarians;
142 (D) superintendents of schools and assistant county
143 superintendents of schools; (E) any county school
144 attendance director holding a West Virginia teacher's
145 certificate; (F) members of the research, extension,
146 administrative, or library staffs of the public schools; (G)
147 the State Superintendent of Schools, heads and assistant
148 heads of the divisions under his or her supervision, or any
149 other employee under the state superintendent performing
150 services of an educational nature; (H) employees of the
151 State Board of Education who are performing services of an
152 educational nature; (I) any person employed in a
153 nonteaching capacity by the State Board of Education, any
154 county board of education, the State Department of
155 Education, or the State Teachers Retirement Board, if that
156 person was formerly employed as a teacher in the public
157 schools; (J) all classroom teachers, principals, and
158 educational administrators in schools under the supervision
159 of the Division of Corrections, the Division of Health, or the
160 Division of Human Services; (K) an employee of the State
161 Board of School Finance, if that person was formerly
162 employed as a teacher in the public schools; (L) employees
163 of an educational services cooperative who are performing
164 services of an educational nature; and (M) any person
165 designated as a 21st Century Learner Fellow pursuant to
166 §18A-3-11 of this code who elects to remain a member of
167 the State Teachers Retirement System provided in this
168 article.

169 "Total service" means all service as a teacher or
170 nonteacher while a member of the retirement system since
171 last becoming a member and, in addition thereto, credit for
172 prior service, if any.

173 Age in excess of 70 years shall be considered to be 70
174 years.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

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

3 “Annual addition” means, for purposes of the
4 limitations under Section 415(c) of the Internal Revenue
5 Code, the sum credited to a member’s account for any
6 limitation year of: (A) Employer contributions; (B)
7 employee contributions; and (C) forfeitures. Repayment of
8 cash-outs or contributions as described in Section 415(k)(3)
9 of the Internal Revenue Code, rollover contributions and
10 picked-up employee contributions to a defined benefit plan
11 may not be treated as annual additions, consistent with the
12 requirements of Treasury Regulation §1.415(c)-1.

13 “Annuity account” or “annuity” means an account
14 established for each member to record the deposit of
15 member contributions and employer contributions and
16 interest, dividends, or other accumulations credited on
17 behalf of the member.

18 “Compensation” means the full compensation actually
19 received by members for service whether or not a part of the
20 compensation is received from other funds, federal or
21 otherwise, than those provided by the state or its
22 subdivisions: *Provided*, That annual compensation for
23 determining contributions during any determination period
24 may not exceed the maximum compensation allowed as
25 adjusted for cost of living in accordance with §5-10D-7 of
26 this code and Section 401(a)(17) of the Internal Revenue
27 Code: *Provided, however*, That solely for purposes of
28 applying the limitations of Section 415 of the Internal
29 Revenue Code to any annual addition, “compensation” has
30 the meaning given it in §18-7B-13d of this code.

31 “Consolidated board” or “board” means the
32 Consolidated Public Retirement Board created and
33 established pursuant to §5-10D-1 *et seq.* of this code.

34 “Defined contribution system” or “system” means the
35 Teachers’ Defined Contribution Retirement System created
36 and established by this article.

37 “Employer” means the agency of and within the State of
38 West Virginia which has employed or employs a member.

39 “Employer contribution” means an amount deposited
40 into the member’s individual annuity account on a periodic
41 basis coinciding with the employee’s regular pay period by
42 an employer from its own funds.

43 “Employment term” means employment for at least 10
44 months in any plan year with a month being defined as 20
45 employment days.

46 “Existing employer” means any employer who
47 employed or employs a member of the system.

48 “Existing retirement system” means the State Teachers
49 Retirement System established in §18-7A-1 *et seq.* of this
50 code.

51 “Internal Revenue Code” means the Internal Revenue
52 Code of 1986, as it has been amended.

53 “Member” or “employee” means the following persons,
54 if regularly employed for full-time service: (A) Any person
55 employed for instructional service in the public schools of
56 West Virginia; (B) principals; (C) public school librarians;
57 (D) superintendents of schools and assistant county
58 superintendents of schools; (E) any county school
59 attendance director holding a West Virginia teacher’s
60 certificate; (F) members of the research, extension,
61 administrative, or library staffs of the public schools; (G)
62 the State Superintendent of Schools, heads and assistant
63 heads of the divisions under his or her supervision, or any
64 other employee under the state superintendent performing
65 services of an educational nature; (H) employees of the
66 State Board of Education who are performing services of an
67 educational nature; (I) any person employed in a
68 nonteaching capacity by the State Board of Education, any

69 county board of education, or the State Department of
70 Education, if that person was formerly employed as a
71 teacher in the public schools; (J) all classroom teachers,
72 principals, and educational administrators in schools under
73 the supervision of the Division of Corrections and the
74 Department of Health and Human Resources; (K) any
75 person who is regularly employed for full-time service by
76 any county board of education, educational services
77 cooperative, or the State Board of Education; (L) the
78 administrative staff of the public schools including deans of
79 instruction, deans of men and deans of women, and financial
80 and administrative secretaries; and (M) any person
81 designated as a 21st Century Learner Fellow pursuant to
82 §18A-3-11 of this code who elects to remain a member of
83 the Teachers' Defined Contribution Retirement System
84 established by this article.

85 "Member contribution" means an amount reduced from
86 the employee's regular pay periods, and deposited into the
87 member's individual annuity account within the Teachers'
88 Defined Contribution Retirement System.

89 "Permanent, total disability" means a mental or physical
90 incapacity requiring absence from employment service for
91 at least six months: *Provided*, That the incapacity is shown
92 by an examination by a physician or physicians selected by
93 the board: *Provided, however*, That for employees hired on
94 or after July 1, 2005, "permanent, total disability" means an
95 inability to engage in substantial gainful activity by reason
96 of any medically determinable physical or mental
97 impairment that can be expected to result in death, or has
98 lasted or can be expected to last for a continuous period of
99 not less than 12 months and the incapacity is so severe that
100 the member is likely to be permanently unable to perform
101 the duties of the position the member occupied immediately
102 prior to his or her disabling injury or illness.

103 "Plan year" means the 12-month period commencing on
104 July 1 of any designated year and ending on the following
105 June 30.

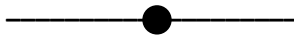
106 “Public schools” means all publicly supported schools,
107 including normal schools, colleges, and universities in this
108 state.

109 “Regularly employed for full-time service” means
110 employment in a regular position or job throughout the
111 employment term regardless of the number of hours worked
112 or the method of pay.

113 “Required beginning date” means April 1 of the
114 calendar year following the later of: (A) The calendar year
115 in which the member attains age 70 and one-half years; or
116 (B) the calendar year in which the member retires or
117 otherwise ceases employment with a participating employer
118 after having attained the age of 70 and one-half years.

119 “Retirement” means a member’s withdrawal from the
120 active employment of a participating employer and
121 completion of all conditions precedent to retirement.

122 “Year of employment service” means employment for
123 at least ten months, with a month being defined as 20
124 employment days: *Provided*, That no more than one year of
125 service may be accumulated in any 12-month period.



CHAPTER 90

**(Com. Sub. for S. B. 154 - By Senators Jeffries,
Baldwin, Stollings, Lindsay, Plymale, Hamilton and
Boso)**

[Passed March 7, 2019; in effect ninety days from passage.]

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-13d, relating to the Specialist Nicholas Caleb Jividen Act; authorizing the use of school facilities for funerals and memorial services; recognizing

schools are integral parts of communities and the death of certain community members can have a significant impact on communities; requiring county board of education to allow school facilities use for funeral and memorial services of certain community members; permitting county boards of education to establish process for requesting the use of school facilities for funeral and memorial services; providing that county boards of education are not responsible for additional costs associated with such funeral and memorial services that are held at school facilities; and prohibiting such funeral and memorial services held at school facilities from disrupting or interfering with classroom instruction, scheduled school event or activity, or governmental use.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13d. Use of school facilities for funeral and memorial services.

1 (a) Public schools in this state serve as an integral part
2 of the community and the death of a community member of
3 distinction who was a military service member or veteran
4 who served under honorable conditions, or who served as a
5 first responder, can have a significant impact on students
6 and the surrounding community.

7 (b) Notwithstanding any other provision of this code or
8 any policy currently in place, county boards of education shall
9 allow school facilities in the county to be used for the funeral
10 or memorial service, or both funeral and memorial services, of
11 a community member of distinction who was a military service
12 member or veteran who served under honorable conditions or
13 who served as a first responder, consistent with this section.
14 County boards may set up a process by which requests to use
15 school facilities for such purposes may be made. County
16 boards may not be responsible for additional costs incurred as
17 a result of holding the funeral or memorial service at the school
18 facility.

19 (c) Any funeral or memorial service held at a school
20 facility may not disrupt or interfere with classroom
21 instruction, any other scheduled school event or activity, or
22 other official governmental use, such as when a school
23 serves as a polling place for an election.

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CHAPTER 91

**(S. B. 267 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed February 11, 2019; in effect ninety days from passage.]
[Approved by the Governor on February 19, 2019.]

AN ACT to amend and reenact §18-2-12 of the Code of West Virginia, 1931, as amended, relating to requiring the State Board of Education to adopt a policy detailing the appropriate level of computer science instruction that shall be available to students at each programmatic level; and requiring the West Virginia Department of Education to develop and offer professional development opportunities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-12. Computer science courses of instruction; learning standards; state board plan development.

1 (a) Legislative findings:

2 (1) Computer technology increasingly is pervasive in
3 nearly every function of society from consumer products to
4 transportation, communications, electrical infrastructure,
5 logistics, agriculture, medical treatments, research, security,
6 and financial transactions;

7 (2) The U. S. Bureau of Labor Statistics predicts that by
8 2024, there will be more than 800,000 new jobs in the
9 STEM fields and more than two thirds of these directly will
10 be in computing occupations;

11 (3) Studying computer science prepares students to
12 enter many career areas, both within and outside of
13 computing, teaching them logical reasoning, algorithmic
14 thinking, design, and structured problem-solving skills
15 applicable in many contexts from science and engineering
16 to the humanities and business;

17 (4) Computer science is an established discipline at the
18 collegiate and post-graduate levels but, unfortunately,
19 computer science concepts and courses have not kept pace
20 in the K-12 curriculum, to the point that the nation faces a
21 serious shortage of computer scientists at all levels that is
22 likely to continue for the foreseeable future; and

23 (5) Organizations such as the Computer Science
24 Teachers Association, the International Society for
25 Technology in Education, and technology industry leaders
26 have developed recommendations for standards,
27 curriculum, and instructional resources for computer
28 technology learning in K-12 schools.

29 (b) Prior to the 2017 regular legislative session, the state
30 board shall submit a plan to the Legislative Oversight
31 Commission on Education Accountability for the
32 implementation of computer science instruction and
33 learning standards in the public schools. The plan shall
34 include at least the following:

35 (1) Recommendations for a core set of learning
36 standards designed to provide the foundation for a complete
37 computer science curriculum and its implementation at the
38 K-12 level including, but not limited to:

39 (A) Introducing the fundamental concepts of computer
40 science to all students, beginning at the elementary school
41 level;

42 (B) Presenting computer science at the secondary school
43 level in a way that is both accessible and worthy of an
44 academic curriculum credit and may fulfill a computer
45 science, math, or science graduation credit;

46 (C) Encouraging schools to offer additional secondary
47 level computer science courses that will allow interested
48 students to study facets of computer science in more depth
49 and prepare them for entry into the workforce or college;
50 and

51 (D) Increasing the availability of rigorous computer
52 science for all students;

53 (2) Recommendations for teaching standards and
54 secondary certificate endorsements if necessary for teachers
55 to deliver curriculum appropriate to meet the standards;

56 (3) Recommendations for units of instruction or courses
57 in academic and vocational technical settings that
58 complement any existing K-12 computer science and IT
59 curricula where they are already established, especially the
60 advanced placement computer science curricula and
61 professional IT certifications; and

62 (4) Proposals for implementation of the
63 recommendations over a period not to exceed four years and
64 estimates of any associated additional costs.

65 (c) Nothing in this section requires adoption or
66 implementation of any specific recommendation or any
67 level of appropriation by the Legislature.

68 (d) Recognizing the importance of computer science
69 instruction and how computer science instruction will assist
70 students in their transition to post-secondary opportunities,
71 prior to the 2020-2021 school year, the state board shall

72 adopt a policy detailing the appropriate level of computer
73 science instruction that shall be available to students at each
74 programmatic level.

75 (e) The West Virginia Department of Education shall
76 develop and offer professional development opportunities
77 to ensure educators are equipped with the requisite
78 knowledge and skill to deliver computer science instruction
79 as outlined in this section. The department may partner with
80 high-quality computer science professional learning
81 providers in developing and offering the professional
82 development opportunities.



CHAPTER 92

**(Com. Sub. for S. B. 329 - By Senators Cline and
Hamilton)**

[Passed March 8, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-8g, relating to agricultural education in high schools; setting forth findings; encouraging agricultural programs be made available to high school students; requiring State Department of Education to assist in establishing agricultural programs in certain instance; and requiring report to Legislative Oversight Commission on Education Accountability when funding is the primary reason that an agricultural program is not established.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2E. HIGH QUALITY EDUCATIONAL
PROGRAMS.**

§18-2E-8g. Creating successful careers through agricultural education.

1 (a) *Findings and intent.* — The Legislature finds that
2 through agricultural education students are provided
3 opportunities for leadership development, personal growth,
4 and career success in the science, business, and technology
5 of agriculture. Quality agricultural education instruction is
6 delivered through three major components of classroom and
7 laboratory instruction, supervised agricultural experience
8 programs, and student leadership organizations such as the
9 National Future Farmers of America (FFA) Organization.
10 The Legislature further finds that opportunities to prepare
11 for career success in the science, business, and technology
12 of agriculture should be available to every West Virginia
13 high school student.

14 (b) To provide opportunities for all state high school
15 students to prepare for successful careers in agriculture and
16 related fields, beginning in the 2020-2021 school year,
17 school districts and multicounty vocational centers are
18 encouraged to make available agricultural programs to high
19 school students, including, but not limited to, such programs
20 that would allow for and support the establishment of a local
21 FFA chapter. Upon the request of any district or
22 multicounty vocational center that does not have an
23 agricultural program, the State Department of Education
24 shall assist the district or multicounty vocational center in
25 establishing agricultural programs available to high school
26 students in the district. To the extent that funding is the
27 primary reason that an agricultural program is not
28 established, the State Department of Education shall report
29 the same to the Legislative Oversight Commission on
30 Education Accountability.

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CHAPTER 93

**(S. B. 605 - By Senators Rucker, Boso, Maroney,
Tarr, Baldwin, Cline and Sypolt)**

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §18-2-25a and §18-2-25b of the Code of West Virginia, 1931, as amended, all relating to enhancing safety of athletes participating in interscholastic athletics at a school that is a member of the West Virginia Secondary School Activities Commission; modifying qualifications of athletic trainers and physical therapists for certain purposes; requiring the Secondary School Activities Commission to submit certain head injury and concussion-related reports to the Legislative Oversight Commission on Health and Human Resources Accountability; providing that schools that do not follow established protocol on concussions and head injuries in interscholastic athletics are subject to disciplinary actions by the Secondary School Activities Commission; and providing that schools that do not follow the requirements of their emergency action plans for athletics are subject to disciplinary actions by the Secondary School Activities Commission.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-25a. Management of concussions and head injuries in athletics at West Virginia Secondary School Activities Commission member high school or middle school.

- 1 (a) The Legislature makes the following findings:

2 (1) Concussions are one of the most commonly reported
3 injuries in children and adolescents who participate in sports
4 and recreational activities. The Centers for Disease Control
5 and Prevention estimates that as many as 3.9 million sports-
6 related and recreation-related concussions occur in the
7 United States each year;

8 (2) A concussion is caused by a blow or motion to the
9 head or body that causes the brain to move rapidly inside
10 the skull. The risk of catastrophic injuries or death is
11 significant when a concussion or head injury is not properly
12 evaluated and managed;

13 (3) Concussions are a type of brain injury that can range
14 from mild to severe and can disrupt the way the brain
15 normally functions;

16 (4) Concussions can occur in any organized or
17 unorganized sport or recreational activity and can result
18 from a fall or from players colliding with each other or with
19 obstacles;

20 (5) Concussions occur with or without loss of
21 consciousness, but the vast majority occur without loss of
22 consciousness;

23 (6) The interscholastic athlete who continues to play or
24 practice with a concussion or symptoms of head injury is
25 especially vulnerable to greater injury and even death; and

26 (7) Even with generally recognized return-to-play-and-
27 practice standards for concussion and head injury, some
28 affected interscholastic athletes are prematurely returned to
29 play or practice resulting in increased risk of physical injury
30 or death to the athletes in the state of West Virginia.

31 (b) For the purposes of this section, “interscholastic
32 athlete” means any athlete who is participating in
33 interscholastic athletics at a high school or middle school
34 that is a member of the West Virginia Secondary School
35 Activities Commission. “Licensed health care professional”

36 means a health care provider whose licensed scope of
37 practice includes the ability to diagnose and treat an injury
38 or disease.

39 (c) The West Virginia Secondary School Activities
40 Commission shall promulgate rules pursuant to §18-2-25 of
41 this code that address concussions and head injuries in
42 interscholastic athletes: *Provided*, That prior to state board
43 approval and notwithstanding the exemption provided in
44 §29A-1-3 of this code, the state board shall submit the rule
45 to the Legislative Oversight Commission on Education
46 Accountability pursuant to §29A-3B-9 of this code.

47 (d) The rules required by this section shall include, but
48 are not limited to, the following:

49 (1) Guidelines and other pertinent information to inform
50 and educate appropriate school administrators, coaches,
51 interscholastic athletes, and their parents or guardians of the
52 nature and risk of concussion and head injury including the
53 risks of continuing to play or practice after a concussion or
54 head injury;

55 (2) A concussion and head injury information sheet that
56 shall be signed and returned by the interscholastic athlete
57 and the athlete's parent or guardian on an annual basis
58 before the interscholastic athlete begins practice or
59 competition;

60 (3) A requirement that each head coach of an
61 interscholastic sport at a high school or middle school who
62 is a member of the West Virginia Secondary School
63 Activities Commission complete a commission-approved
64 concussion and head injury recognition and return-to-play
65 protocol course annually;

66 (4) A requirement that an interscholastic athlete who is
67 suspected by a licensed health care professional or by his or
68 her head coach or licensed or registered athletic trainer of

69 having sustained a concussion or head injury in a practice
70 or game shall be removed from competition at that time;

71 (5) A requirement that an interscholastic athlete who has
72 been removed from play or practice may not return to play
73 or practice until the athlete is evaluated by a licensed health
74 care professional trained in the evaluation and management
75 of concussions and receives written clearance to return to
76 play and practice from the licensed health care professional;

77 (6) A list of the respective categories of licensed health
78 care professionals including, but not limited to, licensed
79 physical therapists and licensed or registered athletic
80 trainers who, if properly trained in the evaluation and
81 management of concussions, are authorized to provide
82 written clearance for the interscholastic athlete to return to
83 play; and

84 (7) A requirement that all member schools must submit
85 a report to the West Virginia Secondary School Activities
86 Commission within 30 days of an interscholastic athlete
87 suffering or being suspected of suffering a concussion or
88 head injury in a practice or game. The report must state
89 whether an evaluation by a licensed health care professional
90 verified that a concussion or head injury was actually
91 suffered, whether the athlete received written clearance to
92 return to play or practice and, if written clearance was given,
93 the number of days between the incident and the actual
94 return to play or practice. If written clearance to return to
95 play is given after 30 days of the incident, a report update
96 shall be submitted. The West Virginia Secondary School
97 Activities Commission shall compile and submit the reports
98 to the appropriate state and national organization or
99 agencies to analyze and make determinations on whether
100 the rule required by this section needs to be amended or if
101 equipment worn by interscholastic athletes needs to be
102 changed accordingly. The West Virginia School Activities
103 Commission also shall submit the reports to the Legislative
104 Oversight Commission on Health and Human Resources
105 Accountability.

106 (e) Any member school not complying with the
107 requirements of this section, and rules promulgated thereof,
108 shall be subject to the disciplinary actions ordered by the
109 West Virginia Secondary School Activities Commission:
110 *Provided*, That the West Virginia Secondary School
111 Activities Commission shall promulgate rules to establish
112 guidelines for noncompliance and related disciplinary
113 actions: *Provided, however*, That prior to state board
114 approval and notwithstanding the exemption provided in
115 §29A-1-3 of this code, the state board shall submit the rule
116 to the Legislative Oversight Commission on Education
117 Accountability pursuant to §29A-3B-9 of this code.

§18-2-25b. Emergency action plans for athletics.

1 (a) No later than August 1, 2017, the West Virginia
2 Secondary School Activities Commission shall promulgate
3 rules to establish guidelines for emergency action plans for
4 athletics designed to respond to athletic injuries that occur
5 on school property during school-sponsored athletic events.
6 The rules shall address, at a minimum:

7 (1) Protocols for practices and for games;

8 (2) Directives for personnel or equipment which should
9 be available on sports fields or in school buildings for both
10 girls' and boys' teams; and

11 (3) Training needed for school or volunteer personnel
12 on an as-needed basis.

13 (b) All member schools shall submit an emergency
14 action plan for athletics to the West Virginia Secondary
15 School Activities Commission and their county boards of
16 education by December 31, 2017: *Provided*, That the county
17 boards shall keep the emergency plan of each school in the
18 county on file and, unless otherwise provided for, provide a
19 copy of each school's emergency action plan for athletics to
20 each local emergency response agency that has a role in the
21 plan.

22 (c) Any person licensed by, or certified or registered in,
23 this state to provide health care or professional health care
24 services who renders services of a medical nature to
25 students under this section, who has an agreement with a
26 county board of education that defines the scope of his or
27 her duties as such, and for which no remuneration is
28 demanded or received, is not liable for any civil damages as
29 a result of rendering such services, or as a result of any act
30 or failure to act in providing or arranging further medical
31 treatment.

32 (1) The limitation of liability only applies if the services
33 are provided in accordance with acceptable standards of
34 care and the licensed health care provider is not grossly
35 negligent or does not demonstrate willful misconduct.

36 (2) Any liability is limited to the applicable limits of the
37 professional liability insurance provided by the State Board
38 of Risk and Insurance Management in effect at the time.

39 (3) Nothing in this subsection nullifies the immunity
40 from civil liability as granted pursuant to §55-7-15 of this
41 code or federal law except to the extent to which the actions
42 are covered within the applicable limits of the professional
43 liability insurance provided by the State Board of Risk and
44 Insurance Management pursuant to this section and in effect
45 at the time.

46 (d) Any member school not complying with the
47 requirements of this section, and rules promulgated thereof,
48 shall be subject to the disciplinary actions ordered by the
49 West Virginia Secondary School Activities Commission:
50 *Provided*, That the West Virginia Secondary School
51 Activities Commission shall promulgate rules to establish
52 guidelines for noncompliance and related disciplinary
53 actions: *Provided, however*, That prior to state board
54 approval and notwithstanding the exemption provided in
55 §29A-1-3 of this code, the state board shall submit the rule
56 to the Legislative Oversight Commission on Education
57 Accountability pursuant to §29A-3B-9 of this code.



CHAPTER 94

**(Com. Sub. for S. B. 632 - By Senators Maynard,
Azinger, Blair, Boso, Cline, Roberts, Rucker, Smith,
Sypolt, Tarr, Trump and Jeffries)**

[Passed March 9, 2019; in effect July 1, 2019.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-48; to amend said code by adding thereto a new section, designated §18-20-11; and to amend and reenact §18A-2-8 of said code, all relating to improving student safety; requiring safety and security measures of each school facility be upgraded when necessary to ensure, to the best of the county board's ability, the safety of students; creating Safe Schools Fund and providing for distribution of funds subject to appropriation; requiring video cameras capable of audio recording in certain public special education classrooms upon appropriation of funds; designating principal as the custodian; requiring written explanation if there is an interruption in the operation of the video camera; setting forth required capabilities of the video camera; prohibited monitoring in certain areas; allowing video camera to not be in operation when students not present; providing for notice of placement; setting forth video retention and access requirements; providing that immunity from liability not waived and liability not created; providing limitations on use of video; providing for protection of confidentiality and identity of students not involved in incident; allowing appeals to state board; permitting funding from Safe School Fund and gifts, grants, or donations; authorizing state board rule; adding to justifications for which a school employee may be suspended or dismissed; providing duty and authority to provide safe and secure environment;

requiring reports on suspensions and dismissals of employees and database maintained by state superintendent of individuals suspended or dismissed for certain reasons.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-48. Safety and security measures for school facilities; Safe Schools Fund created.

1 (a) Each county board of education and multicounty
2 vocational center shall annually assess the safety and
3 security of each of the school facilities within its
4 boundaries. Safety and security measures of each facility
5 shall be upgraded when necessary to ensure, to the best of
6 the county board's ability, the safety of the students within
7 each facility. Each county board of education shall report
8 annually the safety and security measures it has put in place,
9 including upgrades thereto, to the State Department of
10 Education. Annually, the State Department of Education
11 shall compile the information from the county boards of
12 education, and report the information to the Legislative
13 Oversight Commission on Education Accountability.

14 (b) As used in this section, "safety and security
15 measures" means action taken by a county board of
16 education or multicounty vocational center that improves
17 the security of a school facility and the safety of the students
18 within such facility, including, but not limited to, hiring a
19 school resource officer, installing weapon detection
20 systems, upgrading facility doors or windows, etc.

21 (c) There is hereby created in the State Treasury a
22 special revenue fund to be known as the Safe Schools Fund.
23 The fund shall consist of all moneys received from
24 legislative appropriations and other sources to further the
25 purpose of this section: *Provided*, That annually, the West
26 Virginia Department of Education shall request an

27 appropriation based on the requests of the county boards of
28 education. Subject to legislative appropriation, the funds
29 appropriated annually to the School Safety Fund shall be
30 distributed to the county boards of education and
31 multicounty vocational centers, with the funding amount
32 per school determined by dividing the total annual
33 appropriation by the total number of public schools
34 throughout the state. All moneys distributed from this fund
35 shall be used to support the purpose and intent of this section
36 and all moneys must be spent to support the school for
37 which the funding was derived: *Provided, however,* That
38 moneys distributed from this fund also may be used for the
39 purposes of §18-20-11 of this code, relating to video
40 cameras in certain special education classrooms. Any
41 moneys remaining in the fund at the close of the fiscal year
42 shall be carried forward for use in the next fiscal year. Fund
43 balances shall be invested with the state's Consolidated
44 Investment Fund and any and all interest shall be used solely
45 for the purposes that moneys deposited in the fund may be
46 used pursuant to this article.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-11. Video cameras required in certain special education classrooms.

1 (a) Upon appropriation of funds by the Legislature, a
2 county board of education shall ensure placement of video
3 cameras in self-contained classrooms as defined in state
4 board policy.

5 (b) As used in this section:

6 (1) "Incident" means a raised suspicion by a teacher,
7 aide, parent, or guardian of a child, of bullying, abuse, or
8 neglect of a child or of harm to an employee of a public
9 school by:

10 (A) An employee of a public school or school district;
11 or

12 (B) Another student;

13 (2) “Self-contained classroom” means a classroom at a
14 public school in which a majority of the students in regular
15 attendance are provided special education instruction and as
16 further defined in state board policy; and

17 (3) “Special education” means the same as defined
18 in §18-20-1 *et seq.* of this code.

19 (c) A county board of education shall provide a video
20 camera to a public school for each self-contained classroom
21 that is a part of that school which shall be used in every self-
22 contained classroom. The principal of the school shall be
23 the custodian of the video camera, all recordings generated
24 by the video camera, and access to those recordings
25 pursuant to this section.

26 (d)(1) Every public school that receives a video camera
27 under this section shall operate and maintain the video
28 camera in every self-contained classroom that is part of that
29 school.

30 (2) If there is an interruption in the operation of the
31 video camera for any reason, a written explanation should
32 be submitted to the school principal and the county board
33 explaining the reason and length for which there was no
34 recording. The explanation shall be maintained at the
35 county board office for at least one year.

36 (e)(1) A video camera placed in a self-contained
37 classroom shall be capable of:

38 (A) Monitoring all areas of the self-contained
39 classroom, including, without limitation, a room attached to
40 the self-contained classroom and used for other purposes;
41 and

42 (B) Recording audio from all areas of the self-contained
43 classroom, including, without limitation, a room attached to
44 the self-contained classroom and used for other purposes;

45 (2) A video camera placed in a self-contained classroom
46 shall not monitor a restroom or any other area in the self-
47 contained classroom where a student changes his or her
48 clothes except for incidental monitoring of a minor portion
49 of a restroom or other area where a student changes his or
50 her clothes because of the layout of the self-contained
51 classroom.

52 (3) A video camera placed in a self-contained classroom
53 is not required to be in operation during the time in which
54 students are not present in the self-contained classroom.

55 (f) Before a public school initially places a video camera
56 in a self-contained classroom pursuant to this section, the
57 public school shall provide written notice of the placement
58 to:

59 (1) The parent or legal guardian of a student who is
60 assigned to the self-contained classroom;

61 (2) The county board; and

62 (3) The school employee(s) who is assigned to work
63 with one or more students in the self-contained classroom.

64 (g)(1) A public school shall retain video recorded from
65 a camera placed under this section for at least three months
66 after the date the video was recorded after which the
67 recording shall be deleted or otherwise made unretrievable.

68 (2) If a person requests to view a recording under
69 subsection (k) of this section, the public school shall retain
70 the recording from the date of the request until:

71 (A)(i) Except as provided in §18-20-11(g)(2)(A)(ii) of
72 this code, the person views the recording;

73 (ii) A person who requests to view a recording shall
74 make himself or herself available for viewing the recording
75 within 30 days after being notified by the public school that
76 the person's request has been granted; and

77 (B) Any investigation and any administrative or legal
78 proceedings that result from the recording have been
79 completed, including, without limitation, the exhaustion of
80 all appeals.

81 (h) This section does not:

82 (1) Waive any immunity from liability of a public
83 school district or employee of a public school district; or

84 (2) Create any liability for a cause of action against a
85 public school or school district or employee of a public
86 school or school district.

87 (i) A public school or school district shall not:

88 (1) Allow regular, continuous, or continual monitoring
89 of video recorded under this section; or

90 (2) Use video recorded under this section for:

91 (A) Teacher evaluations; or

92 (B) Any purpose other than the promotion of the health,
93 well-being, and safety of students receiving special
94 education and related services in a self-contained
95 classroom.

96 (j) Except as provided under subsections (k) and (l) of
97 this section, a video recording of a student made under this
98 section is confidential and shall not be released or viewed.

99 (k) Within seven days of receiving a request, a public
100 school or school district shall allow viewing of a video
101 recording by:

102 (1) A public school or school district employee who is
103 involved in an alleged incident that is documented by the
104 video recording and has been reported to the public school
105 or school district;

106 (2) A parent or legal guardian of a student who is
107 involved in an alleged incident that is documented by the
108 video recording and has been reported to the public school
109 or school district;

110 (3) An employee of a public school or school district as
111 part of an investigation into an alleged incident that is
112 documented by the video recording and has been reported
113 to the public school or school district;

114 (4) A law-enforcement officer as part of an investigation
115 into an alleged incident that is documented by the video
116 recording and has been reported to the law-enforcement
117 agency; or

118 (5) The Department of Health and Human Resources as
119 part of a child abuse and neglect investigation: *Provided,*
120 That any access provided to the Department of Health and
121 Human Resources pursuant to this subdivision shall comply
122 with the Family Educational Rights and Privacy Act of
123 1974, 20 U.S.C. § 1232g.

124 (l) When a video is under review as part of the
125 investigation of an alleged incident, and the video reveals a
126 student violating a disciplinary code or rule of the school,
127 which violation is not related to the alleged incident for
128 which the review is occurring, and which violation is not
129 already the subject of a disciplinary action against the
130 student, the student is not subject to disciplinary action by
131 the school for such unrelated violation unless it reveals a
132 separate incident as described in §18-20-11(b)(1) of this
133 code.

134 (m) It is not a violation of subsection (j) of this section
135 if a contractor or other employee of a public school or
136 school district incidentally views a video recording under
137 this section if the contractor or employee of a public school
138 or school district is performing job duties related to the:

139 (1) Installation, operation, or maintenance of video
140 equipment; or

141 (2) Retention of video recordings.

142 (n) This section does not limit the access of a student's
143 parent or legal guardian to a video recording regarding the
144 student under the Family Educational Rights and Privacy
145 Act of 1974, 20 U.S.C. § 1232g, or any other law.

146 (o) A public school or school district shall:

147 (1) Take necessary precautions to conceal the identity
148 of a student who appears in a video recording but is not
149 involved in the alleged incident documented by the video
150 recording for which the public school allows viewing under
151 subsection (j) of this section, including, without limitation,
152 blurring the face of the uninvolved student; and

153 (2) Provide procedures to protect the confidentiality of
154 student records contained in a video recording in
155 accordance with the Family Educational Rights and Privacy
156 Act of 1974, 20 U.S.C. § 1232g, or any other law.

157 (p)(1) Any aggrieved person may appeal to the State
158 Board of Education an action by a public school or school
159 district that the person believes to be in violation of this
160 section.

161 (2) The state board shall grant a hearing on an appeal
162 under this subsection within 45 days of receiving the appeal.

163 (q)(1) A public school or school district may use funds
164 distributed from the Safe Schools Fund created in §18-5-48
165 of this code to meet the requirements of this section.

166 (2) A public school or school district may accept gifts,
167 grants, or donations to meet the requirements of this section.

168 (r) The state board may promulgate a rule in accordance
169 with §29A-3B-1 *et seq.* of this code to clarify the

170 requirements of this section and address any unforeseen
171 issues that might arise relating to the implementation of the
172 requirements of this section.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-8. Suspension and dismissal of school personnel by board; appeal.

1 (a) Notwithstanding any other provisions of law, a board
2 may suspend or dismiss any person in its employment at any
3 time for: Immorality, incompetency, cruelty,
4 insubordination, intemperance, willful neglect of duty,
5 unsatisfactory performance, a finding of abuse by the
6 Department of Health and Human Resources in accordance
7 with §49-1-1 *et seq.* of this code, the conviction of a
8 misdemeanor or a guilty plea or a plea of *nolo contendere*
9 to a misdemeanor charge that has a rational nexus between
10 the conduct and performance of the employee's job, the
11 conviction of a felony or a guilty plea or a plea of *nolo*
12 *contendere* to a felony charge.

13 (b) A charge of unsatisfactory performance shall not be
14 made except as the result of an employee performance
15 evaluation pursuant to §18A-2-12 of this code. The charges
16 shall be stated in writing served upon the employee within
17 two days of presentation of the charges to the board.

18 (c) The affected employee shall be given an opportunity,
19 within five days of receiving the written notice, to request,
20 in writing, a level three hearing and appeals pursuant to the
21 provisions of §6C-2-1 *et seq.* of this code, except that
22 dismissal for a finding of abuse or the conviction of a felony
23 or guilty plea or plea of *nolo contendere* to a felony charge
24 is not by itself grounds for a grievance proceeding. An
25 employee charged with the commission of a felony, a
26 misdemeanor with a rational nexus between the conduct and
27 performance of the employee's job, or child abuse may be

28 reassigned to duties which do not involve direct interaction
29 with pupils pending final disposition of the charges.

30 (d) A county board of education has the duty and
31 authority to provide a safe and secure environment in which
32 students may learn and prosper; therefore, it may take
33 necessary steps to suspend or dismiss any person in its
34 employment at any time should the health, safety, and
35 welfare of students be jeopardized or the learning
36 environment of other students has been impacted.

37 (e) It shall be the duty of any county superintendent to
38 report any employee suspended or dismissed in accordance
39 with this section, including the rationale for the suspension
40 or dismissal, to the state superintendent. The state
41 superintendent shall maintain a database of all individuals
42 suspended or dismissed for jeopardizing the health, safety,
43 and welfare of students, or for impacting the learning
44 environment of other students. The database shall also
45 include the rationale for the suspension or dismissal. The
46 database shall be confidential and shall only be accessible
47 to county human resource directors, county superintendents,
48 and the state superintendent.



CHAPTER 95

**(S. B. 670 - By Senators Rucker, Blair, Azinger,
Cline, Maynard, Plymale, Roberts and Trump)**

[Passed March 8, 2019; in effect ninety days from passage.]

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

AN ACT to amend and reenact §18-30-2, §18-30-3, §18-30-4, and
§18-30-7 of the Code of West Virginia, 1931, as amended, all
relating to the West Virginia College Prepaid Tuition and
Savings Program; expanding eligible educational institutions

to include a private or religious primary, middle, or secondary school; and changing Board of the College Prepaid Tuition and Savings Program membership.

Be it enacted by the Legislature of West Virginia:

ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.

§18-30-2. Legislative findings and purpose.

1 The Legislature finds and determines that enhancing the
2 accessibility and affordability of education for all citizens
3 of West Virginia will promote a well-educated and
4 financially secure population to the ultimate benefit of all
5 citizens of West Virginia, and that assisting individuals and
6 families in planning for future educational expenses by
7 making the tax incentives in 26 U.S.C. § 529 available to
8 West Virginians is one of the proper governmental
9 functions and purposes of the state.

10 The Legislature also finds that continuation of the
11 prepaid tuition plan and creation of a savings plan will
12 further those governmental functions and purposes. It is,
13 therefore, the legislative intent of this article to continue the
14 prepaid tuition plan and to enhance the plan by authorizing
15 the creation of a savings plan so that more students may
16 attend eligible educational institutions.

§18-30-3. Definitions.

1 For the purposes of this article, the following terms have
2 the meanings ascribed to them, unless the context clearly
3 indicates otherwise or as otherwise provided in 26 U.S.C. §
4 529:

5 (a) “Account” means a prepaid tuition account or a
6 savings plan account established in accordance with this
7 article.

8 (b) “Account owner” means the individual, corporation,
9 association, partnership, trust, or other legal entity who

10 enters into a prepaid tuition contract and is obligated to
11 make payments in accordance with the prepaid tuition
12 contract or who enters into a savings plan contract and
13 invests money in a savings plan account.

14 (c) “Beneficiary” means the individual designated as a
15 beneficiary at the time an account is established, the
16 individual designated as the beneficiary when beneficiaries
17 are changed, the individual entitled to receive distributions
18 from an account, and any individual designated by the
19 account owner, his or her agent, or his or her estate in the
20 event the beneficiary is unable or unwilling to receive
21 distributions under the terms of the contract.

22 (d) “Board” means the Board of Trustees of the College
23 Prepaid Tuition and Savings Program as provided in §18-
24 30-4 of this code.

25 (e) “Distribution” means any disbursement from an
26 account in accordance with 26 U.S.C. § 529.

27 (f) “Eligible educational institution” means an
28 institution of higher education or a private or religious
29 primary, middle, or secondary school that qualifies under 26
30 U.S.C. § 529 as an eligible educational institution.

31 (g) “Prepaid tuition account” means an account
32 established by an account owner pursuant to this article in
33 order for the beneficiary to apply distributions in
34 accordance with the prepaid tuition plan.

35 (h) “Prepaid tuition contract” means a contract entered
36 into by the board and an account owner establishing a
37 prepaid tuition account.

38 (i) “Prepaid tuition plan” means the plan that
39 contractually guarantees payment of tuition at a West
40 Virginia public, private, or religious eligible educational
41 institution.

42 (j) “Program” means the West Virginia College Prepaid
43 Tuition and Savings Program established under this article.

44 (k) “Qualified education expenses” mean education
45 expenses permitted under 26 U.S.C. § 529 for enrollment or
46 attendance of a beneficiary at an eligible educational
47 institution.

48 (l) “Savings plan” means the plan that allows account
49 distributions for qualified higher educational expenses and
50 tuition at private or religious primary, middle, and
51 secondary schools.

52 (m) “Savings plan account” means an account
53 established by an account owner pursuant to this article in
54 order for the beneficiary to apply distributions toward
55 qualified higher education expenses and tuition expenses at
56 eligible educational institutions.

57 (n) “Savings plan contract” means a contract entered
58 into by the board or its agent, if any, and an account owner
59 establishing a savings plan account.

60 (o) “Treasurer” means the West Virginia State
61 Treasurer.

62 (p) “Tuition” means the quarter, semester, or term
63 charges imposed by an eligible educational institution and
64 all mandatory fees required as a condition of enrollment by
65 all students for full-time attendance.

**§18-30-4. Creation of program; board; members; terms;
compensation; proceedings generally.**

1 (a) The West Virginia College Prepaid Tuition and
2 Savings Program is continued. The program consists of a
3 prepaid tuition plan and a savings plan.

4 (b) The Board of the College Prepaid Tuition and
5 Savings Program is continued, and all powers, rights, and
6 responsibilities of the Board of Trustees of the Prepaid

7 Tuition Trust Fund are vested in the Board of the College
8 Prepaid Tuition and Savings Program.

9 (c) The board consists of eight members and includes
10 the following:

11 (1) The State Treasurer, or his or her designee;

12 (2) The State Superintendent of Schools, or his or her
13 designee;

14 (3) A representative of the Higher Education Policy
15 Commission, who may or may not be a member of the
16 Higher Education Policy Commission, appointed by the
17 commission who serves as a voting member of the board;

18 (4) A representative of the Council for Community and
19 Technical College Education, who may or may not be a
20 member of the Council for Community and Technical
21 College Education, appointed by the council who serves as
22 a voting member of the board; and

23 (5) Four other members, appointed by the Governor,
24 with knowledge, skill and experience in an arts, academic,
25 business, or financial field, to be appointed as follows:

26 (A) Two private citizens not employed by, or an officer
27 of, the state or any political subdivision of the state; and

28 (B) Two members representing the interests of private
29 institutions of higher education located in this state
30 appointed from one or more nominees of the West Virginia
31 Independent Colleges and Universities.

32 (d) The members representing the interests of private
33 institutions of higher education are appointed by the
34 Governor with the advice and consent of the Senate.

35 (e) Only state residents are eligible for appointment to
36 the board.

37 (f) Members appointed by the Governor serve a term of
38 five years and are eligible for reappointment at the
39 expiration of their terms. If there is a vacancy among
40 appointed members, the Governor shall appoint a person
41 representing the same interests to fill the unexpired term.

42 (g) Members of the board serve until the later of the
43 expiration of the term for which the member was appointed
44 or the appointment of a successor. Members of the board
45 serve without compensation. The Treasurer may pay all
46 expenses, including travel expenses, actually incurred by
47 board members in the conduct of their official duties.
48 Expense payments are made from the College Prepaid
49 Tuition and Savings Program Administrative Account, and
50 are made at the same rate paid to state employees.

51 (h) The Treasurer may provide support staff and office
52 space for the board.

53 (i) The Treasurer is the chairman and presiding officer
54 of the board, and may appoint the employees the board
55 considers advisable or necessary. A majority of the
56 members of the board constitute a quorum for the
57 transaction of the business of the board.

§18-30-7. West Virginia Savings Plan Trust.

1 (a) The board may establish a Savings Plan Trust, and
2 may establish a Savings Plan Trust Fund Account, titled the
3 Savings Plan Trust Fund, within the accounts held by the
4 Treasurer or with a financial institution, an investment
5 manager, a fund manager, the West Virginia Investment
6 Management Board, or any other person for the purpose of
7 managing and investing the trust fund. Assets of the Savings
8 Plan Trust are held in trust for account owners and
9 beneficiaries.

10 (b) The Savings Plan Trust Fund shall receive all
11 moneys from account owners on behalf of beneficiaries of
12 savings plan contracts or from any other source, public or
13 private. Earnings derived from the investment of the

14 moneys in the college Savings Trust Fund shall remain in
15 the fund, held in trust in the same manner as contributions,
16 except as refunded, applied for purposes of the
17 beneficiaries, and applied for purposes of maintaining and
18 administering the savings plan.

19 (c) The corpus, assets, and earnings of the Savings Plan
20 Trust Fund do not constitute public funds of the state and
21 are available solely for carrying out the purposes of this
22 article. Any contract entered into by or any obligation of the
23 board on behalf of and for the benefit of the savings plan
24 does not constitute a debt or obligation of the state, but is
25 solely an obligation of the Savings Plan Trust Fund. The
26 state has no obligation to any designated beneficiary or any
27 other person as a result of the savings plan. All amounts
28 payable from the Savings Plan Trust Fund are limited to
29 amounts available in the fund.

30 (d) Nothing in this article or in any savings plan contract
31 is a promise or guarantee that the distributions available for
32 a beneficiary will cover the cost of qualified education
33 expenses at an eligible educational institution, or as a
34 promise or guarantee of admission to, continued enrollment
35 in, or graduation from an eligible education institution.

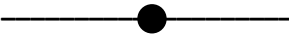
36 (e) The requirements of the provisions of §32-1-101 *et*
37 *seq.* of this code do not apply to the sale of a savings plan
38 contract by the board, its employees, and agents.

39 (f) The savings plan and any Savings Plan Trust Fund
40 shall continue in existence until terminated by the
41 Legislature as it determines or by the board upon
42 determining that continued operation is infeasible. Upon
43 termination of the plan, the balances of savings plan
44 accounts, less any distributions, refunds, fees, charges, and
45 penalties, are sent to account owners, to the extent possible,
46 and any unclaimed assets in the program shall revert to the
47 state in accordance with the Uniform Unclaimed Property
48 Act in §36-8-1 *et seq.* of this code.

49 (g) The state pledges to account owners and
50 beneficiaries of the savings plans that the state will not limit
51 or alter the rights under this article which are vested until
52 the obligations are met and discharged. However, nothing
53 in this subsection prohibits the Legislature from
54 discontinuing or terminating a savings plan.

55 (h) In order to fulfill the charitable and public purposes
56 of this article, neither the earnings nor the corpus of the
57 savings plan trust fund is subject to taxation by the state or
58 any of its political subdivisions.

59 (i) Notwithstanding any provision of this code to the
60 contrary, money in the Savings Plan Trust Fund is exempt
61 from creditor process and not subject to attachment,
62 garnishment, or other process; is not available as security or
63 collateral for any loan, or otherwise subject to alienation,
64 sale, transfer, assignment, pledge, encumbrance, or charge;
65 and is not subject to seizure, taking, appropriation, or
66 application by any legal or equitable process or operation of
67 law to pay any debt or liability of any account owner,
68 beneficiary or successor in interest.



CHAPTER 96

**(S. B. 672 - By Senators Rucker, Blair, Azinger,
Cline, Maynard, Roberts, Romano, Stollings and
Trump)**

[Passed March 7, 2019; in effect from passage.]

[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §18-9D-21 of the Code of West Virginia, 1931, as amended, relating to authorizing the School Building Authority to promulgate legislative rules; authorizing School Building Authority rules relating to

requirements governing the Comprehensive Educational Facility Plan, funding of School Building Authority projects, School Building Authority school planning and design criteria, School Building Authority project administration and review, School Building Authority contract and agreements, School Building Authority reporting procedures, and the School Access Safety Act, by deleting certain provisions in series two through five and series seven that are procedural in nature, deleting series one in its entirety due to its content being solely procedural and declaring it enrolled as a procedural rule, and deleting series six in its entirety due to its content being solely procedural.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-21. Authorizing rules of School Building Authority.

1 (a) The legislative rule filed in the State Register on
2 September 27, 2007, relating to the School Building
3 Authority (School Building Authority requirements for
4 Comprehensive Educational Facility Plan rule), is repealed
5 and enrolled as a procedural rule.

6 (b) The legislative rule filed in the State Register on
7 June 26, 2018, relating to the School Building Authority
8 (funding School Building Authority projects rule), is
9 authorized.

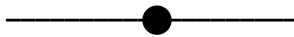
10 (c) The legislative rule filed in the State Register on
11 June 26, 2018, relating to the School Building Authority
12 (School Building Authority school planning and design
13 criteria rule), is authorized.

14 (d) The legislative rule filed in the State Register on
15 June 26, 2018, relating to the School Building Authority
16 (School Building Authority project administration and
17 review rule), is authorized.

18 (e) The legislative rule filed in the State Register on
19 June 26, 2018, relating to the School Building Authority
20 (School Building Authority contract and agreements rule),
21 is authorized.

22 (f) The legislative rule filed in the State Register on June
23 26, 2018, relating to the School Building Authority (School
24 Building Authority reporting procedures rule), is repealed.

25 (g) The legislative rule filed in the State Register on
26 June 26, 2018, relating to the School Building Authority
27 (School Access Safety Act rule), is authorized.



CHAPTER 97

**(Com. Sub. for H. B. 2004 - By Delegates Espinosa,
Graves, Harshbarger, Foster, Worrell, Hanna, Dean,
Sypolt, Hamrick and Howell)**

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §18-2-7d and §18-2-42; to amend and reenact section §18B-3C-4 of said code; to amend said code by adding thereto a new article, designated §21-1E-1, §21-1E-2, §21-1E-3 and §21-1E-4; to amend and reenact §29-3-9 of said code; and to amend said code by adding thereto a new article, designated §30-1E-1, §30-1E-2, §30-1E-3 and §30-1E-4, all relating to requiring a state board rule that adopts a program of instruction in general workforce and career preparedness; providing career and technical education program information to students and parents; requiring transcript of certain post-secondary credits earned by public school students to be provided to them; ensuring that certain career technical education students are

eligible to participate in the graduation ceremony in the same manner as all other students in the district; elevating priority on program integration to meet region and state labor market needs by community and technical college/career and technical education consortia; requiring the facilitating institution to annually submit the Carl D. Perkins local planning guide to the Council for Community and Technical College Education and State Board of Education; providing for joint State Board and Council for Community and Technical College Education guidelines on administration of the code section requiring the formation of community and technical college/career and technical education consortia; providing joint responsibility of State Superintendent and Chancellor for certain activities and reporting; requiring standards and procedures for recognizing career technical training acquired in public schools, apprenticeships and training programs toward occupational testing, certification and/or licensure; establishing purpose and intent; providing definitions; requiring rules providing standards and procedures be proposed by Commissioner of Labor, State Fire Commission, State Fire Marshal and the professions and occupations licensing boards and commissions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7d. Program in workforce preparedness.

1 (a) The Legislature finds that, in addition to specialized
2 skills relating to specific professions and trades, students
3 will be better prepared to enter the workforce and succeed
4 in their chosen fields of employment or education by having
5 the opportunity to participate in training related to general
6 workforce preparedness, productive workplace skills and
7 processes, time management and efficiency, and teamwork
8 and leadership competencies in the workplace. The
9 Legislature further finds that employers in the state are the

10 best source for articulating the general skills and attributes
11 they, in common, seek in future employees and that
12 employers may collaborate in the development of a graduate
13 profile incorporating these skills and attributes.

14 (b) The state board shall promulgate a rule pursuant to
15 §29A-3B-1 *et seq.* of this code that adopts a program of
16 instruction in general workforce and career preparedness for
17 all students. The program of instruction shall include
18 guidelines for schools working through their local school
19 improvement councils and business partners to
20 communicate to students the common skills and attributes
21 sought by employers in prospective employees.

§18-2-42. Providing career and technical education program information to students and parents; transcript of post-secondary credit; career technical education student participation in graduation ceremony.

1 (a) The State Board of Education, the Council for
2 Community and Technical College Education, and the
3 Department of Commerce shall coordinate efforts for the
4 collection and dissemination of information on the career
5 and technical cluster and major programs of study
6 established for the public schools including, but not limited
7 to, the following:

8 (1) Programs of study and the curriculum of courses at
9 the secondary and post-secondary level established pursuant
10 to §18B-3C-4 of this code that lead to an industry-
11 recognized credential, a certificate of applied science degree
12 or an associate degree that satisfy a workforce need;

13 (2) Programs of study and the curriculum of courses at
14 the secondary level recognized pursuant to §21-1E-1 *et seq.*
15 of this code, §29-3-9 of this code and §30-1E-1 *et seq.* of
16 this code as satisfying a portion of the requirements for an
17 apprenticeship and other employer sponsored training
18 programs, as well as any associated programs of study and
19 the curriculum of courses at the post-secondary level that

20 enable the student to also satisfy the requirements for an
21 associate degree; and

22 (3) The EDGE program, established by §18-13-1 *et seq.*
23 of this code, which provides the opportunity for the student
24 to obtain articulated credits that count toward high school
25 graduation requirements, as well as count toward the
26 student's achievement of a certificate or associate degree.

27 (b) The dissemination of the information on programs
28 of study as provided in subsection (a) of this section shall
29 be easily accessible to all students and their parents
30 beginning in the middle school grades.

31 (c) All post-secondary credits earned by a public school
32 student through the EDGE program and any other
33 articulated credit and dual credit program shall be
34 transcribed and provided to the student by the post-
35 secondary institution at which the credit was earned.

36 (d) Any career technical education student who fulfills
37 the high school graduation requirements required of other
38 students in the district in which he or she is enrolled shall be
39 eligible to participate in the graduation ceremony in the
40 same manner as all other students in the district.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-4. Community and technical college/career and technical education consortia planning districts.

1 (a) Unless otherwise designated, the presidents of the
2 community and technical colleges facilitate formation of
3 community and technical college/career and technical
4 education consortia in the state. Each consortium includes
5 representatives of community and technical colleges, public
6 career and technical education centers and state
7 baccalaureate institutions offering associate degrees. The

8 consortium is responsible for carrying out the following
9 actions:

10 (1) Completing a comprehensive assessment of the
11 district to determine what education and training programs
12 are necessary to meet the short- and long-term workforce
13 development needs of the district and to identify the high-
14 demand, high-wage occupations within the service district
15 and develop programs of study, based on the findings, that
16 consist of a curriculum of courses leading to an industry-
17 recognized credential, a certificate of applied science degree
18 or an associate degree;

19 (2) Coordinating efforts with regional labor market
20 information systems to identify the ongoing needs of
21 business and industry, both current and projected, and to
22 provide information to assist in an informed program of
23 planning and decision-making. The priority of each
24 consortium is to identify the high-demand, high-wage
25 occupations within the service district and, in conjunction
26 with the public schools, develop integrated secondary and
27 post-secondary programs of study that lead to an industry-
28 recognized credential, a certificate of applied science degree
29 or an associate degree;

30 (3) Developing integrated secondary and post-
31 secondary programs of study that lead to an industry-
32 recognized credential, a certificate of applied science degree
33 or an associate degree to satisfy a workforce need as
34 determined by the Department of Commerce. The
35 Department of Commerce shall on occasion, but at least
36 annually, provide written notification to the State Board of
37 Education and the West Virginia Council for Community
38 and Technical College Education a determination of areas
39 of workforce need;

40 (4) Increasing the integration of secondary and post-
41 secondary curriculum and programs that are targeted to
42 meet regional and state labor market needs, including
43 implementing seamless programs of study, including West

44 Virginia EDGE, Advanced Career Education, Registered
45 Apprenticeships and any program that allows students to
46 earn college credit while they are still in high school;

47 (5) Ensuring that the programs of study include coherent
48 and rigorous content aligned with challenging academic
49 standards and relevant career and technical education
50 content. The programs shall provide for student movement
51 through a coordinated, nonduplicative progression of
52 courses that align secondary education with community and
53 technical college education to prepare students to succeed at
54 the community and technical college level and in high-
55 wage, high-demand occupations;

56 (6) Planning and developing a unified effort between the
57 community and technical colleges and public career and
58 technical education to meet the documented workforce
59 development needs of the district and state through
60 individual and cooperative programs; shared facilities,
61 faculty, staff, equipment and other resources; and the
62 development and use of distance learning and other
63 education technologies;

64 (7) Collaborating and developing jointly the
65 collaborative programming for adults between the
66 community and technical colleges and the public career and
67 technical centers. The focus of these collaborative efforts is
68 the development of advanced skill programming that builds
69 on the secondary curriculum and allows career and technical
70 education graduates to acquire more in-depth preparation in
71 their occupational area of interest;

72 (8) As a consortium, regularly reviewing and revising
73 curricula to ensure that the work force needs are met;
74 developing new programs and phasing out or modifying
75 existing programs, as appropriate, to meet such needs; and
76 streamlining procedures for designing and implementing
77 customized training programs;

- 78 (9) Planning and implementing integrated professional
79 development activities for secondary and post-secondary
80 faculty, staff and administrators;
- 81 (10) Ensuring that program graduates have attained the
82 competencies required for successful employment through
83 the involvement of business, industry and labor in
84 establishing student credentialing;
- 85 (11) Assessing student knowledge and skills which may
86 be gained from multiple sources so that students gain credit
87 toward program completion and advance more rapidly
88 without repeating course work in which they already
89 possess competency;
- 90 (12) Cooperating with workforce investment boards to
91 establish one-stop-shop career centers with integrated
92 employment and training and labor market information
93 systems that enable job seekers to assess their skills, identify
94 and secure needed education training, and secure
95 employment, and that allow employers to locate available
96 workers;
- 97 (13) Increasing the integration of adult literacy, adult
98 basic education, federal Workforce Innovation and
99 Opportunity Act and community and technical college
100 programs and services to expedite the transition of adults
101 from welfare to gainful employment, including cooperating
102 with the State Department of Education to provide adult
103 basic education programs on each community and technical
104 college campus in the state where developmental education
105 services are provided; and
- 106 (14) Establishing a single point of contact for employers
107 and potential employers to access education and training
108 programs throughout the district.
- 109 (b) The community and technical college education
110 consortium shall cooperate with the regional workforce
111 investment board in the district and shall participate in any

112 development or amendment to the regional workforce
113 investment plan.

114 (c) To carry out the provisions of this section,
115 community and technical college/career and technical
116 education consortia planning districts are established and
117 defined as follows:

118 (1) Northern Panhandle District includes Hancock,
119 Brooke, Ohio, Marshall and Wetzel counties.

120 (A) The facilitating institution is West Virginia
121 Northern Community and Technical College.

122 (B) Participating institutions include West Virginia
123 Northern Community and Technical College; John Marshall
124 High School; Cameron High School; John D. Rockefeller
125 IV Career Center; and other public career and technical
126 centers offering post-secondary programs.

127 (2) North Central West Virginia District includes
128 Monongalia, Marion, Preston, Taylor, Barbour, Randolph,
129 Doddridge, Harrison, Braxton, Lewis, Calhoun, Gilmer and
130 Upshur counties.

131 (A) The facilitating institution is Pierpont Community
132 and Technical College.

133 (B) Participating institutions include Pierpont
134 Community and Technical College; Glenville State
135 College; Randolph County Technical Center; Monongalia
136 County Technical Education Center; United Technical
137 Center; Marion County Technical Center; Fred W. Eberle
138 Technical Center; Calhoun Gilmer Career Center; Taylor
139 County Technical Center; and other public career and
140 technical centers offering post-secondary programs.

141 (3) Mid-Ohio Valley District includes Tyler, Pleasants,
142 Ritchie, Wood, Wirt, Jackson and Roane counties.

143 (A) The facilitating institution is West Virginia
144 University at Parkersburg.

145 (B) Participating institutions include West Virginia
146 University at Parkersburg; Roane-Jackson Technical
147 Center; Wood County Technical Center; Mid-Ohio Valley
148 Technical Institute and other public career and technical
149 centers offering post-secondary programs.

150 (4) Potomac Highlands District includes Tucker,
151 Pendleton, Grant, Hardy, Mineral and Hampshire counties.

152 (A) The facilitating institution is Eastern West Virginia
153 Community and Technical College.

154 (B) Participating institutions include Eastern West
155 Virginia Community and Technical College; South Branch
156 Career and Technical Center; Mineral County Technical
157 Center; and other public career and technical centers
158 offering post-secondary programs.

159 (5) Shenandoah Valley District includes Berkeley,
160 Jefferson and Morgan counties.

161 (A) The facilitating institution is Blue Ridge
162 Community and Technical College.

163 (B) Participating institutions include Blue Ridge
164 Community and Technical College; James Rumsey
165 Technical Institute; and other public career and technical
166 centers offering post-secondary programs.

167 (6) Advantage Valley District includes Fayette,
168 Kanawha, Clay, Putnam, Cabell, Mason and Wayne
169 counties.

170 (A) The facilitating institution for Cabell, Mason and
171 Wayne counties is Mountwest Community and Technical
172 College. The facilitating institution for Clay, Fayette,
173 Kanawha and Putnam counties is BridgeValley Community
174 and Technical College.

175 (B) Participating institutions include Mountwest
176 Community and Technical College; BridgeValley
177 Community and Technical College; Carver Career and
178 Technical Education Center; Garnet Career Center; Ben
179 Franklin Career and Technical Center; Putnam Career and
180 Technical Center; Cabell County Career-Technology
181 Center; Mason County Career Center; and other public
182 career and technical centers offering post-secondary
183 programs.

184 (7) Southern Mountains District includes Lincoln,
185 Boone, Logan, Mingo, Wyoming and McDowell counties.

186 (A) The facilitating institution is Southern West
187 Virginia Community and Technical College.

188 (B) Participating institutions include Southern West
189 Virginia Community and Technical College; Boone County
190 Career and Technical Center; Wyoming County Career and
191 Technical Center; Ralph R. Willis Career and Technical
192 Center; McDowell County Career and Technology Center;
193 Mingo Extended Learning Center; and other public career
194 and technical centers offering post-secondary programs.

195 (8) Southeastern District includes Raleigh, Summers,
196 Fayette, Nicholas, Webster, Pocahontas, Greenbrier,
197 Monroe and Mercer counties.

198 (A) The facilitating institution is New River
199 Community and Technical College.

200 (B) Participating institutions include New River
201 Community and Technical College; BridgeValley
202 Community and Technical College; Bluefield State
203 College; Academy of Careers and Technology; Fayette
204 Institute of Technology; Summers County High School;
205 Monroe County Technical Center; Mercer County
206 Technical Education Center; Nicholas County Career and
207 Technical Center; and other public career and technical
208 centers offering post-secondary programs.

209 (9) Cochairs preside over each consortium as follows:

210 (A) The president of the facilitating community and
211 technical college, or his or her designee; and

212 (B) A career and technical education center
213 administrator, or his or her designee, representing one of the
214 participating institutions and selected by the consortium
215 administrative leaders.

216 (d) In the role of the facilitating institution of the
217 consortium, the college:

218 (1) Communicates to the council and state board;

219 (2) Facilitates the delivery of comprehensive
220 community and technical college education in the region,
221 which includes the seven areas of comprehensive
222 community and technical college education delivery as
223 required by §18B-3C-6 of this code;

224 (3) Facilitates development of a statement of
225 commitment signed by all participating institutions in the
226 region setting forth how community and technical college
227 education will be delivered; and

228 (4) Submits annually the Carl D. Perkins local planning
229 guide to the council and the state board.

230 (e) The state board and council shall jointly promulgate
231 guidelines for the administration of this section. The
232 guidelines shall be affirmatively adopted by both the board
233 and the council. At a minimum, such guidelines shall
234 provide for the following:

235 (1) Participating institutions are not subordinate to the
236 facilitating institution but shall sign the statement of
237 commitment to participate.

238 (2) Integrated secondary and post-secondary programs
239 of study that lead to an industry-recognized credential, a

240 certificate of applied science degree or an associate degree
241 shall be reduced to written partnership agreements;

242 (3) The programs of study must meet the requirements
243 of the accrediting entity for the community and technical
244 college awarding the associate degrees;

245 (4) That partnership agreements must be approved by
246 the State Superintendent of Schools and the Chancellor for
247 the Council for Community and Technical College
248 Education; and

249 (5) Any other provisions necessary to effectuate the
250 purposes of this section.

251 (f) The State Superintendent of Schools and the
252 Chancellor for the Council for Community and Technical
253 College Education are responsible for annually evaluating
254 the progress made in meeting the goals for each consortium
255 through the development and collection of performance
256 indicator data.

257 (g) The State Superintendent of Schools and the
258 Chancellor for the Council for Community and Technical
259 College Education shall annually report to the Governor and
260 the Legislative Oversight Commission on Education
261 Accountability on the implementation of this section.

CHAPTER 21. LABOR.

ARTICLE 1E. CAREER TRAINING EDUCATION AND APPRENTICESHIPS.

§21-1E-1. Declaration of purpose.

1 The provisions of this article are intended to facilitate
2 certification and/or licensure for workers who acquire
3 training via career technical education provided by West
4 Virginia public schools or an employer-sponsored
5 apprenticeship and employer-sponsored training programs.

§21-1E-2. Definitions.

1 As used in this article and the legislative rules
2 promulgated pursuant to this article:

3 “Apprentice” means someone who is enrolled in an
4 apprenticeship program.

5 “Apprenticeship program” means a program offered by
6 an employer to provide supervised on-the-job training to
7 employees approved by the United States Department of
8 Labor.

9 “Employer sponsored training program” means a
10 program approved in accordance with a rule promulgated
11 pursuant to authority established in §21-1E-4 of this code.

12 "License" means a valid and current certification or
13 license issued by the Commissioner of Labor in accordance
14 with the provisions of this article.

15 “Career technical education” means programs of study,
16 clusters, and pathways approved by the West Virginia
17 Board of Education pursuant to state board policy.

§21-1E-3. Recognition of training and apprenticeships.

1 Beginning July 1, 2019, applicants for certification or
2 licensure shall be permitted to apply training hours earned
3 via career technical education provided by West Virginia
4 public schools or an apprenticeship program or employer-
5 sponsored training program towards the requirements for
6 certification and/or licensure in the same occupation in
7 accordance with the standards and procedures authorized in
8 accordance with this article.

§21-1E-4. Rule-making authority.

1 The Commissioner of Labor shall, after consultation
2 with the State Superintendent of Schools, propose rules for
3 legislative approval, in accordance with the provisions of
4 §29A-3-1 *et seq.* of this code, for the implementation and

5 enforcement of the provisions of this article. The rules shall
6 provide at least the following:

7 (1) Standards and procedures for recognizing training
8 hours acquired through career technical education provided
9 by West Virginia public schools and applying those hours
10 to requirements for testing and/or certification and/or
11 licensure; and

12 (2) Standards and procedures for recognizing training
13 hours acquired through apprenticeship programs and
14 employer-sponsored training programs and applying those
15 hours to requirements for testing and/or certification and/or
16 licensure.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-9. Powers, duties and authority of State Fire Commission and State Fire Marshal.

1 (a) The State Fire Commission may employ personnel,
2 fix their compensation and, within funds available to do so,
3 incur expenses as necessary in the performance of the duties
4 of its office.

5 (b) The State Fire Commission is responsible for fire
6 programs within this state, including the State Fire
7 Marshal's office, training, uniform standards and
8 certification, finance and planning and fire prevention.

9 (c) All state and area training and education in fire
10 service shall be coordinated by the State Fire Commission.
11 The State Fire Marshal shall ensure that these programs are
12 operated throughout the state at a level consistent with needs
13 identified by the commission.

14 (d) The State Fire Commission may make
15 recommendations to the State Insurance Commissioner
16 regarding town classifications for fire insurance rates.

17 (e) The formation of any new fire department, including
18 volunteer fire departments, requires the concurrence of the
19 State Fire Commission. The State Fire Commission shall
20 develop a method of certification which can be applied to
21 all fire departments and volunteer fire departments.

22 (f) The State Fire Commission shall develop a plan for
23 fire prevention and control which shall include, but not be
24 limited to, the following areas: Manpower needs; location
25 of training centers; location of fire prevention and control
26 units; communications; fire fighting facilities; water
27 sources; vehicular needs; public education and information;
28 public participation; standardization in record keeping;
29 evaluation of personnel; reporting of fire hazards; programs
30 on mutual aid; location of public safety agencies; outline of
31 fire prevention programs; and accessibility of fire
32 prevention information.

33 (g) The State Fire Commission shall establish fire
34 protection areas and at such times as funds are available
35 shall establish field offices for inspection, planning and
36 certification.

37 (h) The State Fire Marshal may accept, on behalf of the
38 State Fire Commission, gifts, grants, court ordered civil
39 forfeiture proceedings and bequests of funds or property
40 from individuals, foundations, corporations, the federal
41 government, governmental agencies and other
42 organizations or institutions. The State Fire Marshal, acting
43 on behalf of the State Fire Commission, may enter into, sign
44 and execute any agreements and do and perform any acts
45 that may be necessary, useful, desirable or convenient to
46 effectuate the purposes of this article. Moneys from gifts,
47 grants, civil forfeiture proceedings and bequests received by
48 the State Fire Marshal shall be deposited into the special
49 account set forth in subsection (c), section twelve-b of this
50 article, and the State Fire Marshal, with the approval of the
51 State Fire Commission, has the authority to make
52 expenditures of, or use of any tangible property, in order to
53 effectuate the purposes of this article.

54 (i) The State Fire Commission shall establish standards
55 and procedures by policy to implement the provisions of this
56 section with regard to the following:

57 (1) Fire prevention and control;

58 (2) Uniform standards of performance, equipment and
59 training;

60 (3) Certification;

61 (4) Training and education in fire service, subject to the
62 rule-making requirements set forth in section five-d of this
63 article; and

64 (5) The creation, operation and responsibilities of fire
65 departments throughout the state.

66 (j) Beginning July 1, 2019, applicants for certification
67 or licensure in accordance with the education and training
68 programs under the respective jurisdictions of the State Fire
69 Commission and the State Fire Marshal shall be permitted
70 to apply training hours earned via career technical education
71 provided by West Virginia public schools or an
72 apprenticeship program or employer-sponsored training
73 program towards the requirements for certification and/or
74 licensure by the State Fire Commission and the State Fire
75 Marshal as applicable. The State Fire Commission and State
76 Fire Marshal shall, after consultation with the State
77 Superintendent of Schools, propose rules for legislative
78 approval, in accordance with the provisions of §29A-3-1 *et*
79 *seq.* of this code, for the implementation and enforcement
80 of these provisions. The rules shall provide at least the
81 following:

82 (1) Standards and procedures for recognizing training
83 hours acquired through career technical education provided
84 by West Virginia public schools and applying those hours
85 to requirements for testing and/or certification and/or
86 licensure; and

87 (2) Standards and procedures for recognizing training
88 hours acquired through apprenticeship programs and
89 employer-sponsored training programs and applying those
90 hours to requirements for testing and/or certification and/or
91 licensure.

92 As used in this subsection:

93 “Apprentice” means someone who is enrolled in an
94 apprenticeship program.

95 “Apprenticeship program” means a program offered by
96 an employer to provide supervised on-the-job training to
97 employees approved by the United States Department of
98 Labor.

99 “Employer sponsored training program” means a
100 program approved in accordance with a rule promulgated by
101 the State Fire Commission or the State Fire Marshal under
102 their respective authorities established in this code.

103 “License” means a valid and current certification or
104 license issued by State Fire Commission or the State Fire
105 Marshal for satisfactory completion of education and
106 training programs under their respective jurisdictions.

107 “Career technical education” means programs of study,
108 clusters, and pathways approved by the West Virginia
109 Board of Education pursuant to state board policy.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1E. CAREER TRAINING EDUCATION AND APPRENTICESHIPS.

§30-1E-1. Declaration of purpose.

1 The provisions of this article are intended to facilitate
2 certification and/or licensure for workers who acquire
3 training via career technical education provided by West
4 Virginia public schools or an employer-sponsored
5 apprenticeship and employer-sponsored training programs.

§30-1E-2. Definitions.

1 As used in this article and the legislative rules
2 promulgated pursuant to this article:

3 “Apprentice” means someone who is enrolled in an
4 apprenticeship program.

5 “Apprenticeship program” means a program offered by
6 an employer to provide supervised on-the-job training to
7 employees approved by the United States Department of
8 Labor.

9 “Employer-sponsored training program” means a
10 program approved in accordance with a rule promulgated by
11 the respective board of examination or registration in
12 accordance with their authority granted to by this chapter.

13 “License” means a valid and current certification or
14 license issued by a regulatory board or commission in this
15 chapter.

16 “Career technical education” means programs of study,
17 clusters, and pathways approved by the West Virginia
18 Board of Education pursuant to state board policy.

§30-1E-3. Recognition of training and apprenticeship programs.

1 Beginning July 1, 2019, applicants for certification or
2 licensure pursuant to this chapter shall be permitted to apply
3 training hours earned via career technical education provided
4 by West Virginia public schools or an apprenticeship program
5 or employer-sponsored training program towards the
6 requirements for certification and/or licensure in the same
7 occupation in accordance with the standards and procedures
8 authorized in accordance with this article.

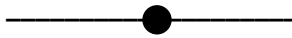
§30-1E-4. Rule-making authority.

1 The licensing boards and commissions in this chapter
2 shall, after consultation with the State Superintendent of

3 Schools, propose rules for legislative approval, in
4 accordance with the provisions of §29A-3-1 *et seq.* of this
5 code for the implementation and enforcement of the
6 provisions of this article. The rules shall provide at least the
7 following:

8 (1) Standards and procedures for recognizing training
9 hours acquired through career technical education provided
10 by West Virginia public schools and applying those hours
11 to requirements for testing and/or certification and/or
12 licensure.

13 (2) Standards and procedures for recognizing training
14 hours acquired through apprenticeship programs and
15 employer-sponsored training programs and applying those
16 hours to requirements for testing and/or certification and/or
17 licensure.



CHAPTER 98

**(H. B. 2009 - By Delegates Hamrick, Dean, Phillips,
Cadle, Porterfield, Wilson, Jennings, Cooper and
Espinosa)**

[Passed March 7, 2019; in effect ninety days from passage.]

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

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §18-5E-8, relating
to creating a new category of Innovation in Education grant
program designated Innovation in Education/Mastery-Based;
making findings and stating purpose and intent; providing
definitions; delineating applicability of other Innovation in
Education provisions of article; specifying duties of state
board with respect to program; requiring participation in
incubator process; prohibiting penalties for students who

transfer from mastery-based schools; and requiring institutions of higher education to recognize and accept high school diplomas on equal footing.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5E. INNOVATION IN EDUCATION ACT.

§18-5E-8. Innovation in Education/Mastery-Based schools; legislative findings, purpose and intent; definitions; applicability of other provisions; state board duties for implementation; student credentials upon transfer and matriculation.

1 (a) The Legislature finds that when instruction is
2 delivered to a class of students at a uniform pace, some
3 students accumulate knowledge and skill deficits as they
4 progress through the curriculum which, particularly in the
5 STEM areas, limit their ability to be successful at higher
6 levels. This traditional time-based system of education
7 pushes students forward at the end of the allotted time
8 period even if they have not mastered the content fully. For
9 too many students, these accumulated deficits result in
10 required remediation prior to undertaking collegiate level
11 coursework or at least some gaps in the preparation of recent
12 high school graduates for the demands of the workplace.
13 Concurrently, this time-based system limits the educational
14 progress of students who do master the content more
15 quickly by not permitting them to move on to more
16 challenging material, elective subjects, or dual credit and
17 advanced placement courses that they have already
18 demonstrated their readiness to undertake.

19 The Legislature finds further that new approaches to
20 educational delivery that simultaneously address these
21 challenges are being implemented in some innovative
22 schools and school systems. These approaches use an
23 instructional delivery model where students progress as they
24 master the content, rather than when they receive at least the
25 minimum passing grade at the end of a set time period.

26 These approaches, typically referred to as mastery-based,
27 proficiency-based or competency-based education,
28 empower students who demonstrate content mastery to
29 progress more quickly to higher levels and, consequently,
30 allow additional attention to be given to meeting the needs
31 of those who have not yet mastered the content. Because the
32 shift to such models often requires fundamental changes in
33 scheduling, assessment, grading, the award of credits and
34 diplomas and other aspects of traditional schooling,
35 implementation requires an intentional approach that
36 engages multiple stakeholders in developing and executing
37 a long-term plan. The statutes and policies designed to
38 regulate the traditional time-based system may also create
39 real or perceived barriers to a mastery-based approach. For
40 these reasons, several states have established pilot programs
41 specific to implementing these new approaches that provide
42 developmental assistance, additional support and regulatory
43 waivers when necessary for the pilot schools to make the
44 transition.

45 (b) The purpose of this section is to create a separate
46 category under this act, entitled Innovation in
47 Education/Mastery-Based, for schools interested in
48 undertaking the transition to mastery-based education. It is
49 the intent of this section to establish a multistep process that
50 assists these schools to develop a broader awareness and
51 understanding of mastery-based education prior to
52 application, assess the capacity and readiness of schools to
53 proceed, allow several options for implementation or for
54 opting-out of the application process, and create an network
55 incubator process for continuing the support of schools
56 designated as Innovation in Education/Mastery-Based
57 schools following full application and grant award.

58 (c) For purposes of this section:

59 “Incubator process” means a process where schools that
60 are willing and ready to begin implementing a mastery-
61 based model of education form a network of not more than
62 20 mastery-based education schools. The schools in this

63 network will receive support for, including, but not limited
64 to, program development, professional development,
65 stakeholder education, establishing mastery assessment,
66 coaching and on-going technical assistance. The incubator
67 process will enable schools within the network to share
68 information on their progress and setbacks, collaborate on
69 innovative approaches, and provide data on student progress
70 and best practices for the continued implementation of
71 mastery-based education.

72 “Mastery-based education” means an education system
73 designed to improve educational outcomes by advancing
74 student mastery of content knowledge and skills through the
75 following core principles:

76 (A) Student advancement upon mastery of a concept or
77 skill;

78 (B) Competencies that include explicit, measurable, and
79 transferable learning objectives that empower a student;

80 (C) Assessment that is meaningful and provides a
81 positive learning experience for a student;

82 (D) Timely, differentiated support based on a student’s
83 individual learning needs;

84 (E) Learning outcomes that emphasize competencies
85 that include application and creation of knowledge along
86 with the development of important skills and dispositions;

87 (F) Incorporating partnerships with post-secondary
88 institutions and members of industry; and

89 (d) Other provisions of this article related to schools
90 designated as Innovation in Education schools also apply to
91 Innovation in Education/Mastery-Based schools unless
92 otherwise specifically provided by this section, including,
93 but not limited to, the following:

94 (1) Innovation in Education/Mastery-Based schools are
95 not limited to the implementation of key innovational
96 priorities in the five areas, *i.e.*, STEM, community school
97 partnership, entrepreneurship, career pathways, and the arts,
98 listed in §18-5E-1 of this code. References in this article to
99 these areas relative to Innovation in Education application,
100 designation, plan and evaluation for the purposes of this
101 section means Innovation in Education/Mastery-Based and
102 are applicable to Innovation in Education/Mastery-Based
103 schools except as otherwise provided in this section:
104 *Provided*, That nothing in this subdivision prohibits an
105 Innovation in Education/Mastery-Based school from
106 including an emphasis in one or more of the five listed areas
107 in their mastery-based plan, nor prohibits a school
108 previously designated as an Innovation in Education school
109 from transitioning to mastery-based education under this
110 section;

111 (2) The application, application review and state board
112 rule pursuant to §18-5E-3 of this code for implementing
113 Innovation in Education schools shall be modified to
114 accommodate the multistep process for Innovation in
115 Education/Mastery-Based schools consistent with the
116 provisions of this section; and

117 (3) Legislative appropriations made for Innovation in
118 Education/Mastery-Based schools shall be deposited in the
119 Innovation in Education Fund created in §18-5E-7 of this
120 code and may be used solely for the purposes of Innovation
121 in Education/Mastery-Based schools consistent with this
122 section.

123 (e) The state board shall perform the following activities
124 for implementing the Innovation in Schools/Mastery-Based
125 program:

126 (1) Establish an advisory committee including, but not
127 limited to, public school professional educators,
128 representatives of community and technical colleges,
129 colleges and universities, employers and organizations

130 advocating for education on behalf of employers, parents
131 and Department of Education staff and others who may
132 possess knowledge of mastery-based education. The
133 advisory committee shall advise and assist the state board in
134 carrying out the activities under this section, including, but
135 not limited to, building a broader awareness and
136 understanding of mastery-based models of education,
137 identifying potential roadblocks and potential solutions to
138 implementing mastery-based models of education,
139 recognizing student mastery upon matriculation or transfer,
140 establishing evaluative criteria to assess the readiness of
141 schools to undertake the transition to mastery-based
142 education, reviewing applications of schools interested in
143 implementing mastery-based education and making
144 recommendations to the state board and developing an
145 incubator process for supporting the network of schools
146 willing and ready to begin the transition to a mastery-based
147 education model;

148 (2) Promote a broader awareness and understanding in
149 mastery-based education among teachers, administrators,
150 parents, students, business leaders and policymakers;

151 (3) Develop and publish an application designed
152 specifically for schools interested in initial consideration for
153 becoming an Innovation in Education/Mastery-Based
154 school. The application for initial consideration is separate
155 from the application for Innovation in Education
156 designation pursuant to §18-5E-3 of this code and may not
157 require an Innovation in Education plan pursuant to §18-5E-
158 4 of this code. In addition, the application process shall:

159 (A) Include the evaluative criteria that will be used to
160 assess the readiness of schools to undertake the transition to
161 mastery-based education. Within the evaluative criteria, the
162 state board may include an intent to select any proportion of
163 schools of diverse demographic character and
164 programmatic levels for participation in the initial network
165 of mastery-based education schools; and

166 (B) Be open to all schools including those currently
167 designated as Innovation in Education schools who are
168 interested in adding mastery-based education to their
169 existing plan;

170 (4) Establish a process, which may include an on-site
171 visit to schools which apply for initial consideration for
172 becoming an Innovation in Education/Mastery-Based
173 school to assess the readiness of applicants to undertake the
174 transition to mastery-based education. This process shall be
175 used to assist in identifying and recommending to the state
176 board an initial network of not more than 20 schools who
177 are ready to undertake the transition to mastery-based
178 education.

179 (5) Establish a process to deepen the understanding of
180 mastery-based education of the schools selected for the
181 initial network of schools. The process may include, but is
182 not limited to, visits to schools that have implemented an
183 education system that incorporates the core principals of
184 mastery-based education as defined in this section.

185 (6) For schools selected for the initial network who elect
186 to proceed with the implementation of a mastery-based
187 model of education, provide technical assistance to prepare
188 an Innovation in Education/Mastery-Based plan and
189 operational agreement with their county board as provided
190 in §18-5E-4 and §18-5E-5 of this code. Schools in the initial
191 network may:

192 (A) Opt-out of further participation prior to submission
193 of an Innovation in Education/Mastery-Based plan and
194 agreement;

195 (B) Apply for an Innovation in Education/Mastery-
196 Based grant for the transition to a mastery-based education
197 model within a limited subject area or areas across multiple
198 grade levels, such as, but not limited to, mathematics or
199 STEM related academic and technical programs of study; or

200 (C) Apply for an Innovation in Education/Mastery-
201 Based grant for the transition to a school-wide mastery-
202 based education model or other configurations as may be
203 determined practicable by the state board.

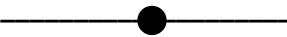
204 (7) In addition to any applicable measures of success
205 required for an Innovation in Education plan pursuant to
206 §18-5E-4 of this code, an Innovation in Education/Mastery-
207 Based plan shall include a subset of uniform measures of
208 success in improving education outcomes by advancing
209 student mastery of the content knowledge and skills.

210 (8) Implement an incubator process to support the
211 network of schools that are awarded Innovation in
212 Education/Mastery-Based education grants pursuant to this
213 article.

214 (f) In addition to any grant or other financial assistance
215 awarded to a school designated as an Innovation in
216 Education/Mastery-Based school in accordance with this
217 section, the school shall participate in the incubator process
218 established under this section.

219 (g) A student enrolled at a school that establishes
220 mastery-based education who then transfers to another
221 school within the county or in any other county in this state
222 that does not have a mastery-based education program, may
223 not be penalized by being required to repeat course work
224 covering content that the student has successfully mastered
225 or by any other penalty related to the student's previous
226 attendance in the mastery-based education program.

227 (h) An institution of higher education in this state shall
228 recognize and accept credentials and diplomas awarded to
229 students indicating a level of content mastery gained, in
230 whole or in part, through mastery-based education on equal
231 footing as a traditional high school transcript and diploma.



CHAPTER 99

(Com. Sub. for H. B. 2422 - By Delegate Summers)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §18-2-9 of the Code of West Virginia, 1931, as amended, relating to providing for the county board to select the week for the observation of “Celebrate Freedom Week” and adding the Emancipation Proclamation as a document to be studied.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-9. Required courses of instruction.

1 (a) In all public, private, parochial and denominational
2 schools located within this state there shall be given prior to
3 the completion of the eighth grade at least one year of
4 instruction in the history of the State of West Virginia. The
5 schools shall require regular courses of instruction by the
6 completion of the twelfth grade in the history of the United
7 States, in civics, in the Constitution of the United States and
8 in the government of the State of West Virginia for the
9 purpose of teaching, fostering and perpetuating the ideals,
10 principles and spirit of political and economic democracy in
11 America and increasing the knowledge of the organization
12 and machinery of the government of the United States and
13 of the State of West Virginia. The state board shall, with the
14 advice of the state superintendent, prescribe the courses of
15 study covering these subjects for the public schools. It shall
16 be the duty of the officials or boards having authority over
17 the respective private, parochial and denominational

18 schools to prescribe courses of study for the schools under
19 their control and supervision similar to those required for
20 the public schools. To further such study, every high school
21 student eligible by age for voter registration shall be
22 afforded the opportunity to register to vote pursuant to §3-
23 2-22 of this code.

24 (b) The state board shall cause to be taught in all of the
25 public schools of this state the subject of health education,
26 including instruction in any of the grades six through 12 as
27 considered appropriate by the county board, on: (1) The
28 prevention, transmission and spread of acquired immune
29 deficiency syndrome and other sexually transmitted
30 diseases; (2) substance abuse, including the nature of
31 alcoholic drinks and narcotics, tobacco products and other
32 potentially harmful drugs, with special instruction as to their
33 effect upon the human system and upon society in general;
34 (3) the importance of healthy eating and physical activity to
35 maintaining healthy weight; and (4) education concerning
36 cardiopulmonary resuscitation and first aid, including
37 instruction in the care for conscious choking, and
38 recognition of symptoms of drug or alcohol overdose. The
39 course curriculum requirements and materials for the
40 instruction shall be adopted by the state board by rule in
41 consultation with the Department of Health and Human
42 Resources. The state board shall prescribe a standardized
43 health education assessment to be administered within
44 health education classes to measure student health
45 knowledge and program effectiveness.

46 (c) An opportunity shall be afforded to the parent or
47 guardian of a child subject to instruction in the prevention,
48 transmission and spread of acquired immune deficiency
49 syndrome and other sexually transmitted diseases to
50 examine the course curriculum requirements and materials
51 to be used in the instruction. The parent or guardian may
52 exempt the child from participation in the instruction by
53 giving notice to that effect in writing to the school principal.

54 (d) After July 1, 2015, the required instruction in
55 cardiopulmonary resuscitation in subsection (b) of this
56 section shall include at least 30 minutes of instruction for
57 each student prior to graduation on the proper
58 administration of cardiopulmonary resuscitation (CPR) and
59 the psychomotor skills necessary to perform
60 cardiopulmonary resuscitation. The term “psychomotor
61 skills” means the use of hands-on practicing to support
62 cognitive learning. Cognitive-only training does not qualify
63 as “psychomotor skills”. The CPR instruction must be based
64 on an instructional program established by the American
65 Heart Association or the American Red Cross or another
66 program which is nationally recognized and uses the most
67 current national evidence-based Emergency Cardiovascular
68 Care guidelines and incorporates psychomotor skills
69 development into the instruction. A licensed teacher is not
70 required to be a certified trainer of cardiopulmonary
71 resuscitation to facilitate, provide or oversee such
72 instruction. The instruction may be given by community
73 members, such as emergency medical technicians,
74 paramedics, police officers, firefighters, licensed nurses and
75 representatives of the American Heart Association or the
76 American Red Cross. These community members are
77 encouraged to provide necessary training and instructional
78 resources such as cardiopulmonary resuscitation kits and
79 other material at no cost to the schools. The requirements of
80 this subsection are minimum requirements. A local school
81 district may offer CPR instruction for longer periods of time
82 and may enhance the curriculum and training components,
83 including, but not limited to, incorporating into the
84 instruction the use of an automated external defibrillator
85 (AED): *Provided*, That any instruction that results in a
86 certification being earned must be taught by an authorized
87 CPR/AED instructor.

88 (e) A full week of classes during the week selected by
89 the county board of education shall be recognized as
90 “Celebrate Freedom Week”. The purpose of Celebrate
91 Freedom Week is to educate students about the sacrifices

92 made for freedom in the founding of this country and the
93 values on which this country was founded.

94 Celebrate Freedom Week must include appropriate
95 instruction in each social studies class which:

96 (1) Includes an in-depth study of the intent, meaning and
97 importance of the Declaration of Independence, the
98 Emancipation Proclamation and the Constitution of the
99 United States with an emphasis on the Bill of Rights;

100 (2) Uses the historical, political and social environments
101 surrounding each document at the time of its initial passage
102 or ratification; and

103 (3) Includes the study of historical documents to firmly
104 establish the historical background leading to the
105 establishment of the provisions of the Constitution and Bill
106 of Rights by the founding fathers for the purposes of
107 safeguarding our Constitutional republic.

108 The requirements of this subsection are applicable to all
109 public, private, parochial and denominational schools
110 located within this state. Nothing in this subsection creates
111 a standard or requirement subject to state accountability
112 measures.

113 (f) Beginning the 2018-2019 school year, students in the
114 public schools shall be administered a test the same as or
115 substantially similar to the civics portion of the
116 naturalization test used by the United States Citizenship and
117 Immigration Services between their ninth and twelfth grade
118 years as an indicator of student achievement in the area of
119 civics education. The test results may be reported in the
120 aggregate to the county board for evaluation by the board's
121 curriculum director and reported to the board members.
122 Nothing in this subsection creates a standard or requirement
123 subject to state accountability measures.

●

CHAPTER 100

**(Com. Sub. for H. B. 2541 - By Delegates R.
Thompson, Evans, Lovejoy, Doyle, Hornbuckle,
Hicks, Dean, Paynter, Zukoff and Pyles)**

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-9F-10, relating to requiring certain safety measures be taken at public schools.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9F. SCHOOL ACCESS SAFETY ACT.

§18-9F-10. School safety requirements.

1 In addition to any other requirement contained in this
2 article or the Crisis Response Plan required by §18-9F-9 of
3 this code, each county board of education shall implement
4 a school safety program before September 1, 2019, that at a
5 minimum, requires:

6 (1) Room numbers to be placed on exterior walls or
7 windows of school buildings, so rooms with exterior walls
8 can be identified by law enforcement and first responders
9 from the outside;

10 (2) Providing updated floor plans of the school to first
11 responders and local law enforcement by September 1 of
12 each school year;

13 (3) First aid training for all school personnel and
14 students each school year; and

15 (4) Active shooter training for all school personnel and
16 students at the beginning of each school year.

●

CHAPTER 101

(Com. Sub. for S. B. 491 - By Senators Trump and Palumbo)

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

AN ACT to amend and reenact §3-2-11 of the Code of West Virginia, 1931, as amended, relating generally to automatic voting registration through the Division of Motor Vehicles; adding United States citizenship status to information that applicants must provide; requiring the Division of Motor Vehicles to develop a regular process by January 1, 2020, that allows the Secretary of State to fulfill his or her duties as provided by §3-2-3 of this code to confirm that persons who are noncitizens of the United States have not and cannot register to vote via the Online Voter Registration portal; delaying the effective date for automatic voter registration in conjunction with certain Division of Motor Vehicle transactions until July 1, 2021; and requiring the Division of Motor Vehicles, the Department of Transportation, and the Secretary of State to file certain reports with, and appear before, the Joint Committee on Government and Finance and the Joint Standing Committee on the Judiciary during the first interim meetings occurring after September 1, 2019.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-11. Registration in conjunction with driver licensing.

- 1 (a) The Division of Motor Vehicles or other division or
- 2 department that may be established by law to perform motor
- 3 vehicle driver licensing services shall obtain as an integral

4 and simultaneous part of every process of application for the
5 issuance, renewal, or change of address of a motor vehicle
6 driver's license, or official identification card pursuant to
7 the provisions of §17B-2-1 *et seq.* of this code, when the
8 division's regional offices are open for regular business, the
9 following information from each qualified registrant:

10 (1) Full name, including first, middle, last, and any
11 premarital names;

12 (2) Date of birth;

13 (3) Residence address and mailing address, if different;

14 (4) The applicant's electronic signature;

15 (5) Telephone number, if available;

16 (6) Email address, if available;

17 (7) Political party membership, if any;

18 (8) Driver's license number and last four digits of Social
19 Security number;

20 (9) A notation that the applicant has attested that he or
21 she meets all voter eligibility requirements;

22 (10) United States citizenship status;

23 (11) Whether the applicant affirmatively declined to
24 become registered to vote during the transaction with the
25 Division of Motor Vehicles; -

26 (12) Date of application; and

27 (13) Any other information specified in rules adopted to
28 implement this section.

29 (b) Unless the applicant affirmatively declines to
30 become registered to vote or update their voter registration
31 during the transaction with the Division of Motor Vehicles,

32 the Division of Motor Vehicles shall release all of the
33 information obtained pursuant to subsection (a) of this
34 section to the Secretary of State, who shall forward the
35 information to the county clerk for the relevant county to
36 process the newly registered voter or updated information
37 for the already-registered voter pursuant to law. The
38 Division of Motor Vehicles shall notify the applicant that by
39 submitting his or her signature, the applicant grants written
40 consent for the submission of the information obtained and
41 required to be submitted to the Secretary of State pursuant
42 to this section.

43 (c) By no later than January 1, 2020, the Division of
44 Motor Vehicles shall create a regular process that allows the
45 Secretary of State to fulfill his or her duties as provided by
46 §3-2-3 of this code to confirm that persons who are
47 noncitizens of the United States have not and cannot register
48 to vote via the Online Voter Registration portal.

49 (d) Information regarding a person's failure to sign the
50 voter registration application is confidential and may not be
51 used for any purpose other than to determine voter
52 registration.

53 (e) A qualified voter who submits the required
54 information or update to his or her voter registration,
55 pursuant to the provisions of subsection (a) of this section,
56 in person at a driver licensing facility at the time of applying
57 for, obtaining, renewing, or transferring his or her driver's
58 license or official identification card and who presents
59 identification and proof of age at that time is not required to
60 make his or her first vote in person or to again present
61 identification in order to make that registration valid.

62 (f) A qualified voter, who submits by mail or by delivery
63 by a third party an application for registration on the form
64 used in conjunction with driver licensing, is required to
65 make his or her first vote in person and present identification
66 as required for other mail registration in accordance with the
67 provisions of §3-2-10(g) of this code. If the applicant has

68 been previously registered in the jurisdiction and the
69 application is for a change of address, change of name,
70 change of political party affiliation, or other correction, the
71 presentation of identification and first vote in person is not
72 required.

73 (g) An application for voter registration submitted
74 pursuant to the provisions of this section updates a previous
75 voter registration by the applicant and authorizes the
76 cancellation of registration in any other county or state in
77 which the applicant was previously registered.

78 (h) A change of address from one residence to another
79 within the same county which is submitted for driver
80 licensing or nonoperator's identification purposes in
81 accordance with applicable law serves as a notice of change
82 of address for voter registration purposes if requested by the
83 applicant after notice and written consent of the applicant.

84 (i) Completed applications for voter registration or
85 change of address for voting purposes received by an office
86 providing driver licensing services shall be forwarded to the
87 Secretary of State within five days of receipt unless other
88 means are available for a more expedited transmission. The
89 Secretary of State shall remove and file any forms which
90 have not been signed by the applicant and shall forward
91 completed, signed applications to the clerk of the
92 appropriate county commission within five days of receipt.

93 (j) Voter registration application forms containing voter
94 information which are returned to a driver licensing office
95 unsigned shall be collected by the Division of Motor
96 Vehicles, submitted to the Secretary of State, and
97 maintained by the Secretary of State's office according to
98 the retention policy adopted by the Secretary of State.

99 (k) The Secretary of State shall establish procedures to
100 protect the confidentiality of the information obtained from
101 the Division of Motor Vehicles, including any information

102 otherwise required to be confidential by other provisions of
103 this code.

104 (l) A person registered to vote pursuant to this section
105 may cancel his or her voter registration at any time by any
106 method available to any other registered voter.

107 (m) This section does not require the Division of Motor
108 Vehicles to determine eligibility for voter registration and
109 voting.

110 (n) Except for the changes made to subsection (b) of this
111 section during the 2017 regular legislative session, the
112 changes made to this section during the 2016 regular
113 legislative session become effective on July 1, 2021, and
114 any costs associated therewith shall be paid by the Division
115 of Motor Vehicles. The Commissioner of the Division of
116 Motor Vehicles, the Secretary of the Department of
117 Transportation, and the Secretary of State shall each appear
118 before the Joint Committee on Government and Finance and
119 the Joint Standing Committee on the Judiciary, during the
120 first interim meetings of such committees occurring after
121 September 1, 2019, to present written reports containing a
122 full and complete list of any infrastructure each agency
123 requires to achieve the purposes of this section. Along with
124 the report required by this subsection, the Division of Motor
125 Vehicles shall submit a written schedule to both committees
126 outlining how the division will implement the requirements
127 of this section by July 1, 2021.

128 (o) The Secretary of State shall propose rules for
129 legislative approval in accordance with the provisions of
130 §29A-3-1 *et seq.* of this code to implement the requirements
131 of this section.



CHAPTER 102

(Com. Sub. for S. B. 622 - By Senator Tarr)

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

AN ACT to amend and reenact §3-8-1a, §3-8-2, §3-8-4, §3-8-5, §3-8-5b, §3-8-5e, §3-8-7, §3-8-8, §3-8-9, and §3-8-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto five new sections, designated §3-8-5c, §3-8-5g, §3-8-9a, §3-8-9b, and §3-8-9c, all relating generally to the regulation and control of elections; modifying and adding definitions; modifying requirements for information to be included in independent expenditure reports; providing that persons or committees required to file federal expenditure reports are not exempt from requirement to file state-level expenditure and electioneering disclosure reports; raising the threshold amounts for required disclosure of independent expenditures occurring within a certain time frame preceding elections; requiring electronic filing of certain financial disclosure statements; requiring that certain records and receipts related to expenditures for electioneering communications be maintained for five years; removing the deadline before an election for a political action committee or political party committee to file a statement of organization; clarifying that a political committee must file a statement of organization before engaging in any activity; specifying information to be included in a statement of organization; modifying record-keeping requirements for certain receipts and expenditures made for political purposes and requiring that records be maintained for a period of two years; modifying deadlines for financial disclosure reports; providing that candidates for certain offices must file financial disclosure statements electronically and candidates for other

offices may file by mail, facsimile, or electronic means; modifying limits on contributions to candidates and candidate committees; modifying limits on contributions to state party executive committees and legislative caucus campaign committees; modifying limits on contributions to political action committees; providing that precandidates may accept contributions for a general election campaign prior to nomination, but may not expend such funds until after nomination is declared; providing that persons receiving precandidacy contributions are subject to certain expenditure reporting requirements; prohibiting foreign nationals from making contributions or donations to candidates, committees, and parties, and prohibiting receipt of a contribution or donation by a foreign national; modifying daily rate of civil penalty for persons filing late, inaccurate, or incomplete financial statements and making such penalty mandatory; requiring the Secretary of State to publish an online list of persons filing late financial statements; providing that membership organizations are subject to certain limitations applying to corporate contributions and solicitation of contributions by corporations; adding certain expenses to the list of permissible expenses of political committees; providing that coordinated expenditures are treated as contributions; providing criteria for whether an expenditure is coordinated and exceptions thereto; permitting political party committees and legislative caucus campaign committees to make coordinated expenditures up to certain limits in connection with certain state-level candidates; permitting political committees to engage in joint fund-raising efforts pursuant to a written agreement filed with the Secretary of State subject to certain requirements; requiring the State Election Commission to promulgate legislative rules pertaining to joint fund-raising efforts; permitting unlimited transfers of money between and among state party executive committees, legislative caucus campaign committees, and national committees of the same political party for voter registration and get-out-the-vote initiatives; providing that prohibition against intimidating or coercing certain government employees into engaging in political activity also extends to

intimidating or coercing employees into refraining from political activity; eliminating prohibition on a political organization organized under Section 527 of the Internal Revenue Code from soliciting or accepting donations before registering with the Secretary of State; providing that it is unlawful for any person to establish more than one political committee with the intent to evade contribution limitations; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-1a. Definitions.

1 As used in this article, the following terms have the
2 following definitions:

3 (1) “Ballot issue” means a constitutional amendment,
4 special levy, bond issue, local option referendum, municipal
5 charter or revision, an increase or decrease of corporate
6 limits, or any other question that is placed before the voters
7 for a binding decision.

8 (2) “Billboard advertisement” means a commercially
9 available outdoor advertisement, sign, or similar display
10 regularly available for lease or rental to advertise a person,
11 place, or product.

12 (3) “Broadcast, cable, or satellite communication”
13 means a communication that is publicly distributed by a
14 television station, radio station, cable television system, or
15 satellite system.

16 (4) “Candidate” means an individual who:

17 (A) Has filed a certificate of announcement under
18 §3-5-7 of this code or a municipal charter;

19 (B) Has filed a declaration of candidacy under §3-5-23
20 of this code;

21 (C) Has been named to fill a vacancy on a ballot; or

22 (D) Has declared a write-in candidacy or otherwise
23 publicly declared his or her intention to seek nomination or
24 election for any state, district, county, municipal, or party
25 office to be filled at any primary, general, or special
26 election.

27 (5) “Candidate’s committee” means a political
28 committee established with the approval of or in
29 cooperation with a candidate or a prospective candidate to
30 explore the possibilities of seeking a particular office or to
31 support or aid his or her nomination or election to an office
32 in an election cycle. If a candidate directs or influences the
33 activities of more than one active committee in a current
34 campaign, those committees shall be considered one
35 committee for the purpose of contribution limits.

36 (6) “Caucus campaign committee” means a West
37 Virginia House of Delegates or Senate political party caucus
38 campaign committee that receives contributions and makes
39 expenditures to support or oppose one or more specific
40 candidates or slates of candidates for nomination, election,
41 or committee membership.

42 (7) “Clearly identified” means that the name, nickname,
43 photograph, drawing, or other depiction of the candidate
44 appears or the identity of the candidate is otherwise apparent
45 through an unambiguous reference, such as “the Governor”,
46 “your Senator”, or “the incumbent”, or through an
47 unambiguous reference to his or her status as a candidate,
48 such as “the Democratic candidate for Governor” or “the
49 Republican candidate for Supreme Court of Appeals”.

50 (8) “Contribution” means a gift, subscription, loan,
51 assessment, payment for services, dues, advance, donation,
52 pledge, contract, agreement, forbearance, promise of
53 money, or other tangible thing of value, whether conditional
54 or legally enforceable, or a transfer of money or other
55 tangible thing of value to a person, made for the purpose of

56 influencing the nomination, election, or defeat of a
57 candidate.

58 (A) A coordinated expenditure is a contribution for the
59 purposes of this article.

60 (B) An offer or tender of a contribution is not a
61 contribution if expressly and unconditionally rejected or
62 returned. A contribution does not include volunteer personal
63 services provided without compensation: *Provided*, That a
64 nonmonetary contribution is to be considered at fair market
65 value for reporting requirements and contribution
66 limitations.

67 (9) “Coordinated expenditure” is an expenditure made
68 in concert with, in cooperation with, or at the request or
69 suggestion of a candidate or candidate’s committee and
70 meeting the criteria provided in §3-8-9a of this code.

71 (10) “Corporate political action committee” means a
72 political action committee that is a separate segregated fund
73 of a corporation that may only accept contributions from its
74 restricted group as outlined by the rules of the State Election
75 Commission.

76 (11) “Direct costs of purchasing, producing, or
77 disseminating electioneering communications” means:

78 (A) Costs charged by a vendor, including, but not
79 limited to, studio rental time, compensation of staff and
80 employees, costs of video or audio recording media and
81 talent, material and printing costs, and postage; or

82 (B) The cost of air time on broadcast, cable, or satellite
83 radio and television stations, the costs of disseminating
84 printed materials, studio time, use of facilities, and the
85 charges for a broker to purchase air time.

86 (12) “Disclosure date” means either of the following:

87 (A) The first date during any calendar year on which any
88 electioneering communication is disseminated after the
89 person paying for the communication has spent a total of
90 \$5,000 or more for the direct costs of purchasing,
91 producing, or disseminating electioneering
92 communications; or

93 (B) Any other date during that calendar year after any
94 previous disclosure date on which the person has made
95 additional expenditures totaling \$5,000 or more for the
96 direct costs of purchasing, producing, or disseminating
97 electioneering communications.

98 (13) “Election” means any primary, general, or special
99 election conducted under the provisions of this code or
100 under the charter of any municipality at which the voters
101 nominate or elect candidates for public office. For purposes
102 of this article, each primary, general, special, or local
103 election constitutes a separate election. This definition is not
104 intended to modify or abrogate the definition of the term
105 “nomination” as used in this article.

106 (14) (A) “Electioneering communication” means any
107 paid communication made by broadcast, cable or satellite
108 signal, mass mailing, telephone bank, billboard
109 advertisement, or publication in any newspaper, magazine,
110 or other periodical that:

111 (i) Refers to a clearly identified candidate for Governor,
112 Secretary of State, Attorney General, Treasurer, Auditor,
113 Commissioner of Agriculture, Supreme Court of Appeals,
114 or the Legislature;

115 (ii) Is publicly disseminated within:

116 (I) Thirty days before a primary election in which the
117 nomination for office sought by the candidate is to be
118 determined; or

119 (II) Sixty days before a general or special election in
120 which the office sought by the candidate is to be filled; and

121 (iii) Is targeted to the relevant electorate.

122 (B) “Electioneering communication” does not include:

123 (i) A news story, commentary, or editorial disseminated
124 through the facilities of any broadcast, cable or satellite
125 television, radio station, newspaper, magazine, or other
126 periodical publication not owned or controlled by a political
127 party, political committee, or candidate: *Provided*, That a
128 news story disseminated through a medium owned or
129 controlled by a political party, political committee, or
130 candidate is nevertheless exempt if the news is:

131 (I) A bona fide news account communicated in a
132 publication of general circulation or through a licensed
133 broadcasting facility; and

134 (II) Is part of a general pattern of campaign-related news
135 that gives reasonably equal coverage to all opposing
136 candidates in the circulation, viewing, or listening area;

137 (ii) Activity by a candidate committee, party executive
138 committee, a caucus campaign committee, or a political
139 action committee that is required to be reported to the State
140 Election Commission or the Secretary of State as an
141 expenditure pursuant to §3-8-5 of this code or the rules of
142 the State Election Commission or the Secretary of State
143 promulgated pursuant to such provision: *Provided*, That
144 independent expenditures by a party executive committee,
145 caucus committee, or a political action committee required
146 to be reported pursuant to §3-8-2 of this code are not exempt
147 from the reporting requirements of this section;

148 (iii) A candidate debate or forum conducted pursuant to
149 rules adopted by the State Election Commission or the
150 Secretary of State or a communication promoting that
151 debate or forum made by or on behalf of its sponsor;

152 (iv) A communication paid for by any organization
153 operating under Section 501(c)(3) of the Internal Revenue
154 Code of 1986;

155 (v) A communication made while the Legislature is in
156 session which, incidental to promoting or opposing a
157 specific piece of legislation pending before the Legislature,
158 urges the audience to communicate with a member or
159 members of the Legislature concerning that piece of
160 legislation;

161 (vi) A statement or depiction by a membership
162 organization in existence prior to the date on which the
163 individual named or depicted became a candidate, made in
164 a newsletter or other communication distributed only to
165 bona fide members of that organization;

166 (vii) A communication made solely for the purpose of
167 attracting public attention to a product or service offered for
168 sale by a candidate or by a business owned or operated by a
169 candidate which does not mention an election, the office
170 sought by the candidate, or his or her status as a candidate;
171 or

172 (viii) A communication, such as a voter's guide, which
173 refers to all of the candidates for one or more offices, which
174 contains no appearance of endorsement for or opposition to
175 the nomination or election of any candidate and which is
176 intended as nonpartisan public education focused on issues
177 and voting history.

178 (15) "Expressly advocating" means any communication
179 that:

180 (A) Uses phrases such as "vote for the Governor",
181 "re-elect your Senator", "support the incumbent nominee
182 for Supreme Court", "cast your ballot for the Republican
183 challenger for House of Delegates", "Smith for House",
184 "Bob Smith in '04", "vote Pro-Life", or "vote Pro-Choice"
185 accompanied by a listing of clearly identified candidates
186 described as Pro-Life or Pro-Choice, "vote against Old
187 Hickory", "defeat" accompanied by a picture of one or more
188 candidates, "reject the incumbent";

189 (B) Communicates campaign slogans or individual
190 words that can have no other reasonable meaning than to
191 urge the election or defeat of one or more clearly identified
192 candidates, such as posters, bumper stickers,
193 advertisements, etc., which say “Smith’s the One”, “Jones
194 ‘06”, “Baker”, etc.; or

195 (C) Is susceptible of no reasonable interpretation other
196 than as an appeal to vote for or against a specific candidate.

197 (16) “Financial agent” means any individual acting for
198 and by himself or herself, or any two or more individuals
199 acting together or cooperating in a financial way to aid or
200 take part in the nomination or election of any candidate for
201 public office, or to aid or promote the success or defeat of
202 any political party at any election.

203 (17) “Financial transactions” means all contributions or
204 loans received and all repayments of loans or expenditures
205 made to promote the candidacy of any person by any
206 candidate or any organization advocating or opposing the
207 nomination, election, or defeat of any candidate to be voted
208 on.

209 (18) “Firewall” means a policy designed and
210 implemented to prohibit the flow of information between
211 employees or consultants providing services for the person
212 paying for a communication and those employees or
213 consultants currently or previously providing services to a
214 candidate, or to a committee supporting or opposing a
215 candidate, clearly identified in the communication.

216 (19) “Foreign national” means the following:

217 (A) A foreign principal, as such term is defined in 22
218 U.S.C. §611(b), which includes:

219 (i) A government of a foreign country;

220 (ii) A foreign political party;

221 (iii) A person outside of the United States, unless it is
222 established that such person:

223 (I) Is an individual and a citizen of the United States; or

224 (II) That such person is not an individual and is
225 organized under or created by the laws of the United States
226 or of any state or other place subject to the jurisdiction of
227 the United States and has its principal place of business
228 within the United States; and

229 (iv) A partnership, association, corporation,
230 organization, or other combination of persons organized
231 under the laws of, or having its principal place of business
232 in, a foreign country.

233 (B) An individual who is not a citizen of the United
234 States or a national of the United States, as defined in 8
235 U.S.C. §1101(a)(22), and who is not lawfully admitted for
236 permanent residence, as defined by 8 U.S.C. §1101(a)(20).

237 (20) “Fund-raising event” or “fundraiser” means an
238 event such as a dinner, reception, testimonial, cocktail party,
239 auction, or similar affair through which contributions are
240 solicited or received.

241 (21) “In concert or cooperation with or at the request or
242 suggestion of” means that a candidate or his or her agent
243 consulted with:

244 (A) The sender regarding the content, timing, place,
245 nature, or volume of a particular communication or
246 communication to be made; or

247 (B) A person making an expenditure that would
248 otherwise offset the necessity for an expenditure of the
249 candidate or candidate’s committee.

250 (22) “Independent expenditure” means an expenditure
251 by a person:

252 (A) Expressly advocating the election or defeat of a
253 clearly identified candidate, including supporting or
254 opposing the candidates of a political party; and

255 (B) That is not made in concert or cooperation with or
256 at the request or suggestion of such candidate, his or her
257 agents, the candidate's authorized political committee, or a
258 political party committee or its agents.

259 An expenditure which does not meet the criteria for an
260 independent expenditure is considered a contribution.

261 (23) "Local" refers to the election of candidates to a city,
262 county, or municipal office and any issue to be voted on by
263 only the residents of a particular political subdivision.

264 (24) "Mass mailing" means a mailing by United States
265 mail, facsimile, or electronic mail of more than 500 pieces
266 of mail matter of an identical or substantially similar nature
267 within any 30-day period. For purposes of this subdivision,
268 "substantially similar" includes communications that
269 contain substantially the same template or language, but
270 vary in nonmaterial respects such as communications
271 customized by the recipient's name, occupation, or
272 geographic location.

273 (25) "Membership organization" means a group that
274 grants bona fide rights and privileges, such as the right to
275 vote, to elect officers or directors, and the ability to hold
276 office to its members and which uses a majority of its
277 membership dues for purposes other than political purposes.
278 "Membership organization" does not include organizations
279 that grant membership upon receiving a contribution.

280 (26) "Name" means the full first name, middle name, or
281 initial, if any, and full legal last name of an individual and
282 the full name of any association, corporation, committee, or
283 other organization of individuals, making the identity of any
284 person who makes a contribution apparent by unambiguous
285 reference.

286 (27) "Person" means an individual, corporation,
287 partnership, committee, association, and any other
288 organization or group of individuals.

289 (28) "Political action committee" means a committee
290 organized by one or more persons, the primary purpose of
291 which is to support or oppose the nomination or election of
292 one or more candidates. The following are types of political
293 action committees:

294 (A) A corporate political action committee, as that term
295 is defined in this section;

296 (B) A membership organization, as that term is defined
297 in this section; and

298 (C) An unaffiliated political action committee, as that
299 term is defined in this section.

300 (29) "Political committee" means any candidate
301 committee, political action committee, or political party
302 committee.

303 (30) "Political party" means a political party as that term
304 is defined by §3-1-8 of this code or any committee
305 established, financed, maintained, or controlled by the
306 party, including any subsidiary, branch, or local unit thereof
307 and including national or regional affiliates of the party.

308 (31) "Political party committee" means a committee
309 established by a political party or political party caucus for
310 the purposes of engaging in the influencing of the election,
311 nomination, or defeat of a candidate in any election.

312 (32) "Political purposes" means supporting or opposing
313 the nomination, election, or defeat of one or more
314 candidates or the passage or defeat of a ballot issue,
315 supporting the retirement of the debt of a candidate or
316 political committee or the administration or activities of an
317 established political party or an organization which has
318 declared itself a political party, and determining the

319 advisability of becoming a candidate under the pre-
320 candidacy financing provisions of this chapter.

321 (33) “Targeted to the relevant electorate” means a
322 communication which refers to a clearly identified
323 candidate for statewide office or the Legislature and which
324 can be received by 140,000 or more individuals in the state
325 in the case of a candidacy for statewide office, 8,220 or
326 more individuals in the district in the case of a candidacy for
327 the State Senate, and 2,410 or more individuals in the
328 district in the case of a candidacy for the House of
329 Delegates.

330 (34) “Telephone bank” means telephone calls that are
331 targeted to the relevant electorate, other than telephone calls
332 made by volunteer workers, regardless of whether paid
333 professionals designed the telephone bank system,
334 developed calling instructions, or trained volunteers.

335 (35) “Unaffiliated political action committee” means a
336 political action committee that is not affiliated with a
337 corporation or a membership organization.

§3-8-2. Requirements for reporting independent expenditures.

1 (a) In addition to any other reporting required by the
2 provisions of this chapter, any person who makes
3 independent expenditures in an aggregate amount or value
4 in excess of \$1,000 during a calendar year shall file a
5 disclosure statement, according to the requirements of
6 §3-8-5 of this code, that contains all of the following
7 information:

8 (1) The name of the person making the expenditure;

9 (2) The name of any person sharing or exercising
10 direction or control over the activities of the person making
11 the expenditure;

12 (3) The name of the custodian of the books and accounts
13 of the person making the expenditure;

14 (4) If the person making the expenditure is an entity, the
15 principal place of business of the partnership, corporation,
16 committee, association, organization, or group which made
17 the expenditure;

18 (5) The amount of each independent expenditure during
19 the period covered by the statement and the name of the
20 person to whom the expenditure was made;

21 (6) The elections to which the independent expenditure
22 pertain, the names, if known, of the candidates referred to
23 or to be referred to therein, whether the expenditure is
24 intended to support or oppose the identified candidates, and
25 the amount of the total expenditure reported pursuant to
26 subdivision (5) of this subsection spent to support or oppose
27 each of the identified candidates;

28 (7) The name and address of any person who
29 contributed a total of more than \$250 between the first day
30 of the preceding calendar year, and the disclosure date, and
31 whose contributions were made for the purpose of
32 furthering the expenditure;

33 (8) With regard to the contributors required to be listed
34 pursuant to subdivision (7) of this subsection the statement
35 shall also include:

36 (A) The month, day, and year that the contributions of
37 any single contributor exceeded \$250;

38 (B) If the contributor is a political action committee, the
39 name and address the political action committee registered
40 with the Secretary of State, county clerk, or municipal clerk;

41 (C) If the contributor is an individual, the name and
42 address of the individual, his or her occupation, the name
43 and address of the individual's current employer, if any, or,
44 if the individual is self-employed, the name and address of
45 the individual's business, if any;

46 (D) A description of the contribution, if other than
47 money; and

48 (E) The value in dollars and cents of the contribution;
49 and

50 (9) A certification that such independent expenditure
51 was not made in cooperation, consultation, or concert, with,
52 or at the request or suggestion of, any candidate or any
53 authorized committee or agent of such candidate.

54 (b) Any person who makes a contribution for the
55 purpose of funding an independent expenditure under this
56 subsection shall, at the time the contribution is made,
57 provide his or her name, address, occupation, his or her
58 current employer, if any, or, if the individual is
59 self-employed, the name of his or her business, if any, to the
60 recipient of the contribution.

61 (c) The Secretary of State shall expeditiously prepare
62 indices setting forth, on a candidate-by-candidate basis, all
63 independent expenditures separately, made by, on behalf of,
64 for, or against each candidate, as reported under this
65 subsection, and shall periodically publish such indices on a
66 timely pre-election basis.

67 (d)(1) Any person or political committee that makes or
68 contracts to make independent expenditures aggregating
69 \$5,000 or more for any statewide, legislative, or
70 multicounty judicial candidate or \$500 or more for any
71 county office candidate, single-county judicial candidate,
72 committee supporting or opposing a candidate on the ballot
73 in more than one county, or any municipal candidate on a
74 municipal election ballot, after the 15th day, but more than
75 12 hours, before the date of an election shall file a report on
76 a form prescribed by the Secretary of State describing the
77 expenditures within 24 hours: *Provided*, That a person
78 making expenditures for any statewide or legislative
79 candidate on or after the 15th day but more than 12 hours
80 before the day of any election meeting the criteria of this

81 section, but which are subject to the disclosure requirements
82 of §3-8-2b of this code, shall report such expenditures in
83 accordance with the requirements of §3-8-2b of this code
84 and may not file the report otherwise required by this
85 subsection.

86 (2) Any person who files a report under subdivision (1)
87 of this subsection shall file an additional report within 24
88 hours after each time the person makes or contracts to make
89 independent expenditures aggregating an additional \$5,000
90 or more for any statewide, legislative, or multicounty
91 judicial candidate or \$500 with respect to the same election,
92 for any county office, single-county judicial candidate,
93 committee supporting or opposing a candidate on the ballot
94 in more than one county, or any municipal candidate on a
95 municipal election ballot, as that to which the initial report
96 relates.

97 (e) (1) A person, including a political committee, who
98 makes or contracts to make independent expenditures
99 aggregating \$10,000 or more at any time, up to and
100 including the 15th day before the date of an election, shall
101 file a report on a form prescribed by the Secretary of State
102 describing the expenditures within 48 hours.

103 (2) Any person who files a report under subdivision (1)
104 of this subsection shall file an additional report within 48
105 hours after each time the person makes or contracts to make
106 independent expenditures aggregating an additional
107 \$10,000 with respect to the same election as that to which
108 the initial report relates.

109 (f) Any communication paid for by an independent
110 expenditure must include a clear and conspicuous public
111 notice that:

112 (1) Clearly states that the communication is not
113 authorized by the candidate or the candidate's committee;
114 and

115 (2) Clearly identifies the person making the
116 expenditure: *Provided*, That if the communication appears
117 on or is disseminated by broadcast, cable or satellite
118 transmission, the statement required by this subsection must
119 be both spoken clearly and appear in clearly readable
120 writing at the end of the communication.

121 (g) Any person who has spent a total of \$5,000 or more
122 for the direct costs of purchasing, producing, or
123 disseminating electioneering communications during any
124 calendar year shall maintain all financial records and
125 receipts related to such expenditure for a period of five years
126 following the filing of a disclosure pursuant to §3-8-2b of
127 this code and, upon request, shall make such records and
128 receipts available to the Secretary of State or county clerk
129 for the purpose of an audit as provided in §3-8-7 of this
130 code.

131 (h) Any person who willfully fails to comply with this
132 section is guilty of a misdemeanor and, upon conviction
133 thereof, shall be fined not less than \$500, or confined in jail
134 for not more than one year, or both fined and confined.

135 (i)(1) Any person or political committee who is required
136 to file a statement under this section shall file the statement
137 electronically in accordance with such rules as the Secretary
138 of State may promulgate.

139 (2) The Secretary of State shall make any document
140 filed electronically, pursuant to this subsection, accessible
141 to the public on the Internet not later than 24 hours after the
142 document is received by the secretary.

143 (3) In promulgating a rule under this subsection, the
144 secretary shall provide methods, other than requiring a
145 signature on the document being filed, for verifying the
146 documents covered by the rule. Any document verified
147 under any of the methods shall be treated for all purposes,
148 including penalties for perjury, in the same manner as a
149 document verified by signature.

150 (j) This section does not apply to candidates for federal
151 office.

152 (k) The Secretary of State may promulgate emergency
153 and legislative rules, in accordance with the provisions of
154 chapter 29A of this code, to establish guidelines for the
155 administration of this section.

§3-8-4. Treasurers and financial agents; written designation requirements.

1 (a) No person may act as the treasurer of any political
2 action committee or political party committee supporting,
3 aiding, or opposing the nomination, election, or defeat of
4 any candidate for an office encompassing an election
5 district larger than a county unless a written statement of
6 organization, on a form to be prescribed by the Secretary of
7 State, is filed with the Secretary of State. A change of
8 treasurer or financial agent may be made at any time by
9 filing a written statement with the Secretary of State.

10 (b) No person may act as the treasurer for any candidate
11 committee for a candidate for any office encompassing an
12 election district larger than a county, any legislative office,
13 or any circuit judgeship unless a written statement of
14 organization designating that person as the treasurer or
15 financial agent is filed with the Secretary of State. A change
16 of treasurer or financial agent may be made at any time by
17 filing a written statement with the Secretary of State.

18 (c) No person may act as treasurer of any political
19 committee advocating for candidates to be nominated or
20 elected by the voters of a county or a district therein, except
21 legislative and circuit judge candidates, unless a written
22 statement of organization designating him or her as the
23 treasurer is filed with the clerk of the county commission or
24 the Secretary of State. A change of treasurer may be made
25 at any time by filing a written statement with the clerk of the
26 county commission.

27 (d) Prior to engaging in any activity, a political
28 committee shall file a statement of organization required by
29 subsection (a) of this section. A statement of organization
30 form required by this section shall be certified as accurate
31 and true and signed by the treasurer and the chairman of the
32 committee, and shall include the following information:

33 (1) The name of the political committee;

34 (2) The name of the treasurer;

35 (3) The mailing address, telephone number, and e-mail
36 address of the committee;

37 (4) The mailing address, telephone number, and e-mail
38 address of the treasurer, if different from the committee
39 information;

40 (5) The name of the chairman of the committee;

41 (6) The affiliate organization, if any;

42 (7) The type of political committee, as determined by
43 the description of types of committees included in the
44 definitions of “political committee” and “political action
45 committee” in §3-8-1a of this code; and

46 (8) Whether the committee will participate in statewide
47 or local elections.

48 (e) Notwithstanding the provisions of subsections (a),
49 (b), and (c) of this section, a filing designating a treasurer
50 for a state, county, or municipal political committee may be
51 made any time before the committee either accepts or
52 spends funds. Once a designation is made by a state, county,
53 or municipal political committee, no additional designations
54 are required under this section until a successor treasurer is
55 designated.

56 (f) A state, county, or municipal political committee
57 may terminate a designation made pursuant to this section

58 by making a written request to terminate the designation on
59 a form prescribed by the Secretary of State and by filing a
60 report of financial information required in §3-8-5 of this
61 code indicating that the political committee has no funds or
62 debts remaining in the committee's account. This written
63 request shall be filed with either the Secretary of State or the
64 clerk of the county commission as provided by subsections
65 (a), (b), and (c) of this section.

**§3-8-5. Detailed accounts and verified financial statements
required.**

1 (a) *Record-keeping requirements.* —

2 (1) Except for candidates for party committeeman and
3 committeewoman, all candidates for nomination or election
4 to state or local offices and all persons supporting, aiding,
5 or opposing the nomination, election, or defeat of any such
6 candidate shall keep, for a period of two years, records of
7 receipts and expenditures which are made for political
8 purposes.

9 (2) Every candidate or treasurer of every political
10 committee shall keep detailed accounts of every sum of
11 money or other thing of value received by him or her,
12 including all loans of money or things of value and of all
13 expenditures and disbursements made, or liabilities
14 incurred, by the candidate or political committee.

15 (3) A person that is not a political committee and makes
16 independent expenditures or electioneering communications
17 must keep detailed accounts of every sum of money or other
18 thing of value received by him or her for the purpose of
19 furthering any independent expenditure or electioneering
20 communication and of all disbursements made for
21 independent expenditures or electioneering communications.

22 (b) *Financial reporting requirements.* —

23 (1) Every person required to keep detailed accounts
24 under subsection (a) of this section shall file a detailed,
25 itemized sworn statement, as prescribed in §3-8-5a and
26 §3-8-5b of this code, according to the following schedule:

27 (A) On April 1 of each year, the person shall file a
28 statement of all financial transactions dating from January 1
29 to March 31 of the same year, to be filed within six days
30 thereafter;

31 (B) On July 1 of each year, the person shall file a
32 statement of all financial transactions dating from April 1 to
33 June 30 of the same year, to be filed within six days
34 thereafter;

35 (C) On October 1 of each year, the person shall file a
36 statement of all financial transactions dating from July 1 to
37 September 30 of the same year, to be filed within six days
38 thereafter; and

39 (D) On January 1 of each year, the person shall file a
40 statement of all financial transactions dating from October
41 1 to December 31 of the previous year, to be filed within six
42 days thereafter.

43 (2) In addition to the statements required in subdivision
44 (1) of this subsection, a candidate or candidate's committee
45 shall file detailed itemized sworn statements, as prescribed
46 in §3-8-5a and §3-8-5b of this code, according to the
47 following schedule:

48 (A) On the 15th day preceding the primary election in
49 which a candidate is on the ballot, the candidate or
50 committee shall file a statement of all financial transactions
51 subsequent to the previous statement, if any, to be filed
52 within four business days after the 15th day; and

53 (B) On the 15th day preceding the general election in
54 which a candidate, including an official write-in candidate,
55 is on the ballot, the candidate or committee shall file a
56 statement of all financial transactions subsequent to the

57 previous statement, if any, to be filed within four business
58 days after the 15th day.

59 (c) A person required to file reports pursuant to 52 U.S.C.
60 §30104 is exempt from the requirements of subsection (b) of
61 this section but is not exempt from the state-level
62 electioneering communication reports requirements in §3-8-2b
63 of this code or the independent expenditure reporting
64 requirements in §3-8-2 of this code.

65 (d) Every person who is qualified as an official write-in
66 candidate for any elective office shall individually, or by
67 candidate committee, comply with all of the applicable
68 requirements of this section.

69 (e) Candidates for the office of conservation district
70 supervisor elected pursuant to the provisions of §19-21A-1
71 *et seq.* of this code are required to file only the report
72 required by paragraph (A), subdivision (2), subsection (b)
73 of this section immediately prior to the applicable general
74 election that is held concurrently with the state's primary
75 election.

**§3-8-5b. Where financial statements and reports shall be filed;
filing date prescribed.**

1 (a) The financial statements provided for in this article
2 shall be filed, by or on behalf of candidates, with:

3 (1) The Secretary of State for legislative offices, circuit
4 judge, and family court judge, and for statewide and other
5 offices to be nominated or elected by the voters of a political
6 division greater than a county;

7 (2) The clerk of the county commission by candidates
8 for offices to be nominated or elected by the voters of a
9 single county or a political division within a single county,
10 except circuit judge and family court judge; or

11 (3) The proper municipal officer by candidates for
12 office to be nominated or elected to municipal office.

13 (b)(1) The following statements or reports shall be filed
14 electronically, in a manner prescribed by the Secretary of
15 State:

16 (A) Financial statements filed by or on behalf of
17 candidates for Governor, Secretary of State, Attorney
18 General, Auditor, Treasurer, Commissioner of Agriculture,
19 State Senate, House of Delegates, Supreme Court of
20 Appeals, circuit judge, or family court judge;

21 (B) Financial statements filed by political committees;

22 (C) Electioneering communication reports; and

23 (D) Independent expenditure reports.

24 (2) If through or by no fault of the candidate the candidate
25 is unable to file the campaign financial statement, the
26 candidate shall then file said statement in person, via
27 facsimile or other electronic means of transmission, or by
28 certified mail postmarked at the first reasonable opportunity.

29 (3) Committees required to report electronically may
30 apply to the State Election Commission for an exemption
31 from mandatory electronic filing in the case of hardship. An
32 exemption may be granted at the discretion of the State
33 Election Commission.

34 (c) Candidates for all offices not identified in subsection
35 (b) of this section may file financial statements by mail, in
36 person, by facsimile, or by other electronic means of
37 transmission. For purposes of this article, the filing date of
38 a financial statement shall, in the case of mailing, be the date
39 of the postmark of the United States Postal Service, and in
40 the case of hand delivery or delivery by facsimile or other
41 electronic means of transmission, the date delivered to the
42 office of the Secretary of State, or to the office of the clerk
43 of the county commission, in accordance with the
44 provisions of subsection (a) of this section, during regular
45 business hours of that office.

46 (d) The sworn financial statements required to be filed
47 by this section with the Secretary of State shall be posted on
48 the Internet by the Secretary of State within 10 business
49 days from the date the financial statement is filed.

§3-8-5c. Contribution limitations.

1 (a)(1) A person, political party, or political action
2 committee may not, in an election cycle:

3 (A) Contribute more than \$2,800, directly or indirectly,
4 to a candidate's committee for a candidate seeking
5 nomination, including by making contributions to the
6 candidate's committee; or

7 (B) Contribute more than \$2,800, directly or indirectly,
8 to a candidate's committee for a candidate seeking election,
9 including by making contributions to the candidate's
10 committee: *Provided*, That a candidate may receive
11 contributions for the general election prior to nomination,
12 however, such funds may not be expended until after the
13 date of the nomination is declared.

14 (2) The contribution limits of this section apply only to
15 elections to be held after the effective date of this section
16 and do not apply to candidate committees that were created
17 for elections held prior to the effective date of this section.

18 (b) A person may not, directly or indirectly, make
19 contributions to a state party executive committee, or any
20 subsidiary, branch, or local unit thereof, or a caucus
21 campaign committee which, in the aggregate, exceed
22 \$10,000 in any calendar year: *Provided*, That a person may
23 not earmark or otherwise designate any portion of a
24 contribution made pursuant to this subsection to be used to
25 support or oppose the election of a particular candidate:
26 *Provided, however*, That any such designation or earmark
27 that accompanies a contribution made pursuant to this
28 subsection may not be binding on the entity that receives the
29 contribution.

30 (c) A person may not, directly or indirectly, make
31 contributions to a political action committee, related to a
32 particular election, which, in the aggregate, exceed \$5,000.

§3-8-5e. Pre-candidacy financing and expenditures.

1 (a) Notwithstanding any other provisions of this code, it
2 is lawful for a person, otherwise qualified to be a candidate
3 for any public office or position to be determined by public
4 election, to receive contributions or make expenditures, or
5 both personally or by another individual acting as a
6 treasurer, to determine the advisability of becoming such a
7 candidate or preparing to be such a candidate: *Provided*,
8 That such contributions may be received and such
9 expenditures made only during the four years immediately
10 preceding the term for which such person may be a
11 candidate or during the term of office immediately
12 preceding the term for which such person may be a
13 candidate, whichever is less: *Provided, however*, That no
14 person is disqualified from receiving contributions or
15 making expenditures as permitted under the provisions of
16 this section solely because such person then holds a public
17 office or position.

18 (b) Any person undertaking to determine the
19 advisability of becoming or preparing to be a candidate,
20 who desires to receive contributions before filing a
21 certificate of candidacy, shall designate himself or another
22 individual to act as a treasurer and shall file a designation of
23 treasurer in the manner provided in §3-8-4 of this code
24 before receiving any contributions permitted by this section.
25 Any expenditures made before the filing of a designation of
26 treasurer shall be reported in accordance with the provisions
27 of §3-8-5 of this code regardless of the source of funds used
28 for such expenditures.

29 (c) A person who receives a contribution who is acting
30 for and by himself or herself or as treasurer or agent for
31 another pursuant to the provisions of this section shall keep
32 detailed accounts of every sum of money or other thing of

33 value received by him or her, and of all expenditures and
34 disbursements made, and liabilities incurred, in the same
35 manner as such accounts are required by §3-8-5 of this code.

36 (d) Regardless of whether such person becomes a
37 candidate as originally intended, becomes a candidate for some
38 office other than the office or position originally intended, or
39 does not become a candidate, all limits on campaign
40 contributions and campaign expenditures applicable to the
41 candidacy of or advocacy of the candidacy of such person for
42 the office he or she actually seeks shall be applicable to and
43 inclusive of the receipts had and expenditures made during
44 such pre-candidacy period as well as after the person becomes
45 a candidate.

§3-8-5g. Prohibition on political contributions and expenditures by foreign nationals.

1 (a) A foreign national may not, directly or indirectly,
2 make:

3 (1) A contribution or donation, or an express or implied
4 promise to make a contribution or donation, to a candidate's
5 committee, a political committee, or a political party; or

6 (2) An independent expenditure or any disbursement for
7 an electioneering communication related to a state or local
8 election.

9 (b) A person may not solicit, accept, or receive a
10 contribution or donation described in subsection (a) of this
11 section.

§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

1 (a) Any person, candidate, financial agent, or treasurer
2 of a political committee who fails to file a sworn, itemized
3 statement required by this article within the time limitations
4 specified in this article or who willfully files a grossly
5 incomplete or grossly inaccurate statement is guilty of a

6 misdemeanor and, upon conviction thereof, shall be fined
7 not less than \$500 or confined in jail for not more than one
8 year, or both fined and confined. Sixty days after any
9 primary or other election, the Secretary of State, county
10 clerk, or municipal recorder, as the case may be, shall give
11 notice of any failure to file a sworn statement or the filing
12 of any grossly incomplete or grossly inaccurate statement
13 by any person, candidate, financial agent, or treasurer of a
14 political party committee and forward copies of any grossly
15 incomplete or grossly inaccurate statement to the
16 prosecuting attorney of the county where the person,
17 candidate, financial agent, or treasurer resides, is located, or
18 has its principal place of business.

19 (b) (1) Any person, candidate, financial agent, or
20 treasurer of a political committee who fails to file a sworn,
21 itemized statement as required in this article or who files a
22 grossly incomplete or grossly inaccurate statement shall be
23 assessed a civil penalty by the Secretary of State of \$10 a
24 day for each day after the due date the statement is
25 delinquent, grossly incomplete, or grossly inaccurate. Sixty
26 days after any primary or other election, the county clerk
27 shall give notice to the Secretary of State of any failure to
28 file a sworn statement or the filing of any grossly
29 incomplete, or grossly inaccurate statement by any person,
30 candidate, financial agent, or treasurer of a political
31 committee and forward copies of such delinquent,
32 incomplete, or inaccurate statements to the Secretary of
33 State.

34 (2) A civil penalty assessed pursuant to this section shall
35 be payable to the State of West Virginia and is collectable
36 as authorized by law for the collection of debts.

37 (3) The Secretary of State may negotiate and enter into
38 settlement agreements for the payment of civil penalties
39 assessed as a result of the filing of a delinquent, grossly
40 incomplete, or inaccurate statement.

41 (4) The Secretary of State shall publish online a list of
42 all persons required to file statements with the Secretary of
43 State who file statements after the deadline in an election
44 cycle. This list shall be maintained and be publicly available
45 online to include late activity for, at a minimum, the
46 previous five years up to the current year.

47 (5) The Secretary of State and county clerk may review
48 and audit any sworn statement required to be filed pursuant
49 to this article. The State Election Commission shall propose
50 legislative rules for promulgation, in accordance with
51 §29A-3-1 *et seq.* of this code, to establish procedures for the
52 assessment of civil penalties as provided in this section.

53 (c) (1) Any candidate, whether nominated by primary
54 election or appointed by executive committee or executive
55 committee chair, who has failed to file any sworn statement
56 as required by this article relating to the immediately
57 preceding primary election for any office by the 84th day
58 before the general election, is disqualified and may not have
59 his or her name appear on the general election ballot. The
60 provisions of §3-8-5b(d) of this code notwithstanding, any
61 sworn statement filed after the deadline required by §3-8-5
62 of this code must be received in the office indicated by
63 §3-8-5b(a) of this code by the close of business on the 84th
64 day before the general election.

65 (2) It is unlawful to issue a commission or certificate of
66 election, or to administer the oath of office, to any person
67 elected to any public office who has failed to file any sworn
68 statement required by this article and no person may enter
69 upon the duties of his or her office until he or she has filed
70 such statement, nor may he or she receive any salary or
71 emolument for any period prior to the filing of the
72 statement.

73 (3) The vacancy on the ballot created by the
74 disqualification in this subsection is subject to §3-5-19 of
75 this code.

76 (d) As used in this section, “grossly” means substantive
77 and material, and specifically includes false or misleading
78 representations and acts of omissions.

79 (e) The Secretary of State shall provide by rule protocols
80 for written notice via certified mail, return receipt requested,
81 to the person, candidate, financial agent, or treasurer of a
82 political party committee that is not in compliance with the
83 requirements of this section. With respect to a violation of
84 subsection (c) of this section, the notice shall be provided
85 60 days after any primary or other election.

**§3-8-8. Corporation contributions forbidden; exceptions;
penalties; promulgation of rules; additional powers of
State Election Commission.**

1 (a) An officer, agent, or person acting on behalf of any
2 membership organization or any corporation, whether
3 incorporated under the laws of this or any other state or of a
4 foreign country, may not pay, give, lend, or authorize to be
5 paid, any money or other thing of value belonging to the
6 corporation to any candidate or candidate’s campaign
7 committee for nomination or election to any statewide
8 office or any other elective office in the state or any of its
9 subdivisions.

10 (b) A person may not solicit or receive any payment,
11 contribution, or other thing from any membership
12 organization or any corporation or from any officer, agent,
13 or other person acting on behalf of the membership
14 organization or corporation to any candidate or candidate’s
15 campaign committee for nomination or election to any
16 statewide office or any other elective office in the state or
17 any of its subdivisions.

18 (c)(1) The provisions of this section do not prohibit a
19 membership organization or corporation from soliciting,
20 through any officer, agent, or person acting on behalf of the
21 membership organization or corporation, contributions to a
22 separate segregated fund to be used for political purposes.

23 Any separate segregated fund is considered a political
24 action committee for the purpose of this article and is
25 subject to all reporting requirements applicable to political
26 action committees.

27 (2) It is unlawful for:

28 (A) A membership organization, corporation, or
29 separate segregated fund to make a primary or other election
30 contribution or expenditure by using money or anything of
31 value secured: (i) By physical force, job discrimination, or
32 financial reprisal; (ii) by the threat of force, job
33 discrimination, or financial reprisal; or (iii) as a condition of
34 employment;

35 (B) Any person soliciting a membership organization
36 member, stockholder, executive, or administrative
37 personnel member or their family members for a
38 contribution to a membership organization, corporation, or
39 separate segregated fund to fail to inform the person
40 solicited of the political purposes of the separate segregated
41 fund at the time of the solicitation;

42 (C) Any person soliciting any other person for a
43 contribution to a membership organization, corporation, or
44 separate segregated fund to fail to inform the person
45 solicited at the time of the solicitation of his or her right to
46 refuse to contribute without any reprisal;

47 (D) A separate segregated fund established by a
48 membership organization or a corporation: (i) To solicit
49 contributions to the fund from any person other than the
50 membership organization's members or the corporation's
51 stockholders and their families, or its executive or
52 administrative personnel and their families; or (ii) to
53 contribute any membership organization or corporate funds;

54 (E) A separate segregated fund established by a
55 membership organization or corporation to receive
56 contributions to the fund from any person other than the

57 membership organization's members or corporation's
58 stockholders and their immediate families and their
59 executive or administrative personnel and their immediate
60 families;

61 (F) A membership organization or corporation to
62 engage in job discrimination or to discriminate in job
63 promotion or transfer because of a member's or an
64 employee's failure to make a contribution to the
65 membership organization or corporation or a separate
66 segregated fund;

67 (G) A separate segregated fund to make any
68 contribution, directly or indirectly, in excess of the amounts
69 permitted in §3-8-5c of this code in connection with or on
70 behalf of any campaign for nomination or election to any
71 elective office in the state or any of its subdivisions, or in
72 connection with or on behalf of any committee or other
73 organization or person engaged in furthering, advancing,
74 supporting, or aiding the nomination or election of any
75 candidate for any such office; or

76 (H) A membership organization or corporation to pay,
77 give, or lend or to authorize payment, giving, or lending of
78 any moneys or other things of value belonging to the
79 membership organization or corporation to a separate
80 segregated fund for the purpose of making a contribution to
81 a candidate or a candidate's committee. This provision does
82 not prohibit a separate segregated fund from using the
83 property, real or personal, facilities, and equipment of a
84 membership organization or corporation solely to establish,
85 administer, and solicit contributions to the fund, subject to
86 the rules of the State Election Commission as provided in
87 subsection (e) of this section: *Provided*, That any such
88 membership organization or corporation shall also permit
89 any group of its employees represented by a bona fide
90 political action committee to use the real property of the
91 membership organization or corporation solely to establish,
92 administer, and solicit contributions to the fund of the
93 political action committee, subject to the rules of the State

94 Election Commission promulgated in accordance with said
95 subsection.

96 (3) For the purposes of this section, the term “executive
97 or administrative personnel” means individuals employed
98 by a membership organization or corporation who are paid
99 on a salary rather than hourly basis and who have
100 policy-making, managerial, professional, or supervisory
101 responsibilities.

102 (d) Any person, membership organization, or
103 corporation violating any provision of this section is guilty
104 of a misdemeanor and, upon conviction thereof, shall be
105 fined not more than \$10,000. A membership organization or
106 corporation may not reimburse any person the amount of
107 any fine imposed pursuant to this section.

108 (e) To ensure uniform administration and application of
109 the provisions of this section and of those of the Federal
110 Election Campaign Act Amendments of 1976 relating to
111 membership organization and corporate contributions, the
112 State Election Commission shall propose rules for
113 legislative approval in accordance with §29A-3-1 *et seq.* of
114 this code to implement the provisions of this section
115 consistent, insofar as practicable, with the rules and
116 regulations promulgated by the Federal Election
117 Commission to carry out similar or identical provisions of
118 52 U.S.C. §30118.

119 (f) In addition to the powers and duties set forth in
120 §3-1A-1 *et seq.* of this code, the State Election Commission
121 has the following powers and duties:

122 (1) To investigate, upon complaint or on its own
123 initiative, any alleged violations or irregularities of this
124 article.

125 (2) To administer oaths and affirmations, issue
126 subpoenas for the attendance of witnesses, issue subpoenas
127 duces tecum to compel the production of books, papers,

128 records, and all other evidence necessary to any
129 investigation.

130 (3) To involve the aid of any circuit court in the
131 execution of its subpoena power.

132 (4) To report any alleged violations of this article to the
133 appropriate prosecuting attorney having jurisdiction, which
134 prosecuting attorney shall, upon determining that a reason
135 to believe that a violation has occurred, present to the grand
136 jury such alleged violations, together with all evidence
137 relating thereto, no later than the next term of court after
138 receiving the report.

139 (g) The Attorney General shall, when requested, provide
140 legal and investigative assistance to the State Election
141 Commission.

142 (h) Any investigation, either upon complaint or
143 initiative, shall be conducted in an executive session of the
144 State Election Commission and shall remain undisclosed
145 except upon an indictment by a grand jury.

146 (i) Any person who discloses the fact of any complaint,
147 investigation, or report or any part thereof, or any
148 proceedings thereon, is guilty of a misdemeanor and, upon
149 conviction thereof, shall be fined not less than \$1,000, nor
150 more than \$5,000, and shall be confined in jail not less than
151 six months nor more than one year.

152 (j) The amendments to this section enacted during the
153 second extraordinary session of the Legislature, 2008, are
154 intended to conform to the existing proscription to
155 constitutionally permissible limits and not to create a new
156 offense or offenses.

**§3-8-9. Lawful and unlawful election expenses; public opinion
polls and limiting their purposes; limitation upon
expenses; use of advertising agencies and reporting
requirements; delegation of expenditures.**

1 (a) No financial agent or treasurer of a political
2 committee shall pay, give, or lend, either directly or
3 indirectly, any money or other thing of value for any
4 election expenses, except for the following purposes:

5 (1) For rent, maintenance, office equipment, and other
6 furnishing of offices to be used as political headquarters and
7 for the payment of necessary employees;

8 (2) In the case of a candidate who does not maintain a
9 headquarters, for reasonable office expenses, including, but
10 not limited to, filing cabinets and other office equipment,
11 and furnishings, computers, computer hardware and
12 software, scanners, typewriters, calculators, audio visual
13 equipment, the rental of the use of the same, or for the
14 payment for the shared use of same with the candidate's
15 business and for the payment of necessary employees;

16 (3) For printing and distributing books, pamphlets,
17 circulars, and other printed matter, radio and television
18 broadcasting, and painting, printing, and posting signs,
19 banners, and other advertisements, including contributions
20 to charitable, educational, or cultural events, for the
21 promotion of the candidate or the candidate's name, or an
22 issue on the ballot;

23 (4) For renting and decorating halls for public meetings
24 and political conventions, for advertising public meetings,
25 and for the payment of traveling expenses of speakers and
26 musicians at such meetings;

27 (5) For the necessary traveling and hotel expenses of
28 candidates, political agents, and committees and for
29 stationery, postage, telegrams, telephone, express, freight,
30 and public messenger service;

31 (6) For preparing, circulating, and filing petitions for
32 nomination of candidates;

33 (7) For examining the lists of registered voters, securing
34 copies thereof, investigating the right to vote of the persons

35 listed therein, and conducting proceedings to prevent
36 unlawful registration or voting;

37 (8) For conveying voters to and from the polls;

38 (9) For securing publication in newspapers and by radio
39 and television broadcasting of documents, articles,
40 speeches, arguments, and any information relating to any
41 political issue, candidate, or question or proposition
42 submitted to a vote;

43 (10) For conducting public opinion poll or polls. For the
44 purpose of this section, the phrase “conducting of public
45 opinion poll or polls” shall mean and be limited to the
46 gathering, collection, collation, and evaluation of
47 information reflecting public opinion, needs, and
48 preferences as to any candidate, group of candidates, party,
49 issue, or issues. No such poll may be deceptively designed
50 or intentionally conducted in a manner calculated to
51 advocate the election or defeat of any candidate or group of
52 candidates or calculated to influence any person or persons
53 so polled to vote for or against any candidate, group of
54 candidates, proposition, or other matter to be voted on by
55 the public at any election: *Provided*, That nothing herein
56 may prevent the use of the results of any such poll or polls
57 to further, promote or enhance the election of any candidate
58 or group of candidates or the approval or defeat of any
59 proposition or other matter to be voted on by the public at
60 any election;

61 (11) For legitimate advertising agency services,
62 including commissions, in connection with any campaign
63 activity for which payment is authorized by subdivisions
64 (3), (4), (5), (6), (7), (9), and (10) of this subsection;

65 (12) For the purchase of memorials, flowers, or citations
66 by political party executive committees or political action
67 committees representing a political party;

68 (13) For the purchase of nominal noncash expressions
69 of appreciation following the close of the polls of an election
70 or within 30 days thereafter;

71 (14) For the payment of dues or subscriptions to any
72 national, state, or local committee of any political party;

73 (15) For contributions to a county party executive
74 committee, state party executive committee, or a caucus
75 campaign committee;

76 (16) For transfers to any national, state, or local
77 committee of any political party when that committee is
78 acting in the role of a vendor: *Provided*, That no such
79 transfer may involve any coordination between the
80 candidate and the political party committee without being
81 considered as a contribution;

82 (17) For payment for legal and accounting services
83 rendered to a candidate or candidate committee if the
84 services are solely related to the candidacy or campaign;

85 (18) For payment for food and drink for
86 campaign-related purposes;

87 (19) For the payment of any required filing fees
88 associated with the campaign, except that a candidate may
89 not pay any fines assessed against the candidate or the
90 candidate's committee pursuant to this article; and

91 (20) For contributions to a candidate committee:
92 *Provided*, That a candidate committee may not contribute to
93 another candidate committee except as otherwise provided
94 by §3-8-10 of this code.

95 (b) A political action committee may not contribute to
96 another political action committee or receive contributions
97 from another political action committee: *Provided*, That a
98 political action committee may receive contributions from
99 its national affiliate, if any.

100 (c) Every liability incurred and payment made shall be
101 for the fair market value of the services rendered.

102 (d) Every advertising agency subject to the provisions
103 of this article shall file, in the manner and form required by
104 §3-8-5a of this code, the financial statements required by
105 §3-8-5 of this code at the times required therein and include
106 therein, in itemized detail, all receipts from and
107 expenditures made on behalf of a candidate, financial agent,
108 or treasurer of a political party committee.

109 (e) Any candidate may designate a financial agent by a
110 writing duly subscribed by the candidate which shall be in
111 such form and filed in accordance with §3-8-4 of this code.

§3-8-9a. Coordinated expenditures.

1 (a) Except as provided in §3-8-9b of this code, a
2 coordinated expenditure is considered to be a contribution
3 and is subject to all requirements for contributions
4 contained in this article.

5 (b) An expenditure made in concert with, in cooperation
6 with, or at the request or suggestion of a candidate or
7 candidate's committee is a coordinated expenditure if the
8 communication resulting from the expenditure is paid for,
9 in whole or in part, by a person other than the candidate,
10 candidate committee, or party committee, and one of the
11 following circumstances exists:

12 (1) The communication is created, produced,
13 distributed, or undertaken at the request or suggestion of a
14 candidate, candidate committee, or party committee.

15 (2) The candidate, candidate committee, or party
16 committee is involved in the creation, production, or
17 distribution of the communication, or has had discussions
18 about the communication with any person or the agents of a
19 person who has paid for or played a role in the creation,
20 production, or distribution of the communication: *Provided,*
21 That this paragraph does not apply if the information or

22 materials used in the creation, production, distribution, or
23 undertaking of the communication was obtained from a
24 publicly available source.

25 (3) Any person involved in the creation, production, or
26 distribution of the communication has, in the four months
27 preceding the date on which the expenditure is made, been
28 an employee or vendor of campaign services for the
29 candidate, candidate committee, or party committee.

30 (c) An expenditure is not a coordinated expenditure,
31 based solely on any of the following circumstances:

32 (1) A candidate committee or a political party
33 committee responds to an inquiry about the candidate's or
34 political party committee's positions on legislative or policy
35 issues, including substantive discussion of the legislative or
36 policy issues, but not including a discussion of campaign
37 plans, projects, activities, or needs;

38 (2) A candidate endorses another candidate;

39 (3) A candidate solicits funds for another candidate, a
40 political committee, a party committee, or organizations
41 eligible to receive tax-deductible donations under 26 U. S.
42 C. §170 (or any successor provision) and regulations of the
43 U. S. Department of Treasury; or

44 (4) A candidate is clearly identified only in his or her
45 capacity as the owner or operator of a business that existed
46 prior to the candidacy, if the communication does not refer
47 to an election or another candidate who seeks the same
48 office as that candidate.

49 (d)(1) An expenditure otherwise meeting the description
50 of a coordinated expenditure contained in subdivision (3),
51 subsection (b) of this section, is not a coordinated
52 expenditure if the commercial vendor, former employee, or
53 political committee at issue has established and
54 implemented a firewall that meets the following
55 requirements:

56 (A) The firewall is designed and implemented to
57 prohibit the flow of information between employees or
58 consultants providing services for the person paying for the
59 communication and those employees or consultants
60 currently or previously providing services to a candidate, or
61 a committee supporting or opposing a candidate, clearly
62 identified in the communication; and

63 (B) The firewall is described in a written policy that is
64 distributed to all relevant employees, consultants, and
65 clients affected by the policy.

66 (2) A communication does not qualify for the exemption
67 contained in this subsection if, despite the firewall,
68 information subject to the firewall concerning a candidate,
69 candidate's committees, or a party committee's campaign
70 plans, projects, activities, or needs that are material to the
71 creation, production, or distribution of the communication
72 is used or conveyed to the person paying for the
73 communication.

74 (e) Any communication that results from a coordinated
75 expenditure must contain a disclaimer that clearly identifies
76 that the expenditure is coordinated with the candidate, the
77 candidate committee, or the party committee with which it
78 was coordinated.

**§3-8-9b. Coordinated expenditures by political party
committees and political party caucuses in connection
with certain statewide candidates.**

1 (a) Notwithstanding the provisions of §3-8-9a of this
2 code, the state committee of a political party and caucus
3 campaign committee may make coordinated expenditures in
4 an amount not to exceed \$5,000 in connection with the
5 general election campaign of the candidate for each of the
6 following offices: Governor, Attorney General, Auditor,
7 Commissioner of Agriculture, Secretary of State, Treasurer,
8 State Senate, and House of Delegates.

9 (b) Any communication that results from a political
10 expenditure and is made in coordination with a state
11 committee of a political party and caucus campaign
12 committee must contain a disclaimer that clearly identifies
13 that the expenditure is coordinated with the candidate or
14 candidate's committee with whom it was coordinated.

§3-8-9c. Joint fundraising.

1 (a) Political committees may engage in joint fund-
2 raising efforts with other political committees or with
3 committees registered with the Federal Election
4 Commission pursuant to a written joint fund-raising
5 agreement.

6 (b) A written joint fund-raising agreement must be filed
7 with the Secretary of State and must provide terms for the
8 allocation of fund-raising proceeds between or among
9 political committees engaging in the joint fund-raising
10 effort. The Secretary of State shall post all joint fund-raising
11 agreements on the Internet within 10 business days from the
12 date the agreement is filed.

13 (c) Any person soliciting funds for a joint fund-raising
14 effort shall disclose, in making or publishing solicitations,
15 the name of all political committees involved in the joint
16 fund-raising effort and how any proceeds, including any
17 contributions, will be allocated between or among such
18 committees.

19 (d) A person, not otherwise prohibited by this article
20 from making contributions, may make a contribution to a
21 joint fund-raising effort subject to the contribution limits in
22 §3-8-5c of this code.

23 (e) The State Election Commission shall propose rules
24 for legislative approval in accordance with §29A-3-1 *et seq.*
25 of this code to provide requirements for written joint fund-
26 raising agreements and to implement the provisions of this
27 section consistently, insofar as practicable, with the rules

28 and regulations promulgated by the Federal Election
29 Commission in 11 C.F.R. §102.17.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

1 (a) A person may not publish, issue, or circulate, or
2 cause to be published, issued, or circulated, any anonymous
3 letter, circular, placard, radio or television advertisement, or
4 other publication supporting or aiding the election or defeat
5 of a clearly identified candidate.

6 (b) An owner, publisher, editor, or employee of a
7 newspaper or other periodical may not insert, either in its
8 advertising or reading columns, any matter, paid for or to be
9 paid for, which tends to influence the voting at any election,
10 unless directly designating it as a paid advertisement and
11 stating the name of the person authorizing its publication
12 and the candidate in whose behalf it is published.

13 (c) A person may not, in any room or building occupied
14 for the discharge of official duties by any officer or
15 employee of the state or a political subdivision of the state,
16 solicit orally or by written communication delivered within
17 the room or building, or in any other manner, any
18 contribution of money or other thing of value for any party
19 or political purpose, from any postmaster or any other
20 officer or employee of the federal government, or officer or
21 employee of the state, or a political subdivision of the state.
22 An officer, agent, clerk, or employee of the federal
23 government, or of this state, or any political subdivision of
24 the state, who may have charge or control of any building,
25 office, or room, occupied for any official purpose, may not
26 knowingly permit any person to enter any building, office,
27 or room, occupied for any official purpose, for the purpose
28 of soliciting or receiving any political assessments from, or
29 delivering or giving written solicitations for, or any notice

30 of, any political assessments to, any officer or employee of
31 the state, or a political subdivision of the state.

32 (d) Except as provided in §3-8-8 of this code, a person
33 entering into any contract with the state or its subdivisions,
34 or any department or agency of the state, either for rendition
35 of personal services or furnishing any material, supplies, or
36 equipment or selling any land or building to the state, or its
37 subdivisions, or any department or agency of the state, if
38 payment for the performance of the contract or payment for
39 the material, supplies, equipment, land, or building is to be
40 made, in whole or in part, from public funds may not, during
41 the period of negotiation for or performance under the
42 contract or furnishing of materials, supplies, equipment,
43 land, or buildings, directly or indirectly, make any
44 contribution to any political party, committee, or candidate
45 for public office, or to any person for political purposes or
46 use nor may any person or firm solicit any contributions for
47 any purpose during any period.

48 (e) A person may not, directly or indirectly, promise any
49 employment, position, work, compensation, or other benefit
50 provided for, or made possible, in whole or in part, by act of
51 the Legislature, to any person as consideration, favor or
52 reward for any political activity for the support of or
53 opposition to any candidate, or any political party in any
54 election.

55 (f) A person may not, directly or indirectly, make any
56 contribution in excess of the amounts permitted by §3-8-5c
57 of this code, in connection with any campaign for
58 nomination or election to or on behalf of any statewide
59 office, in connection with any other campaign for
60 nomination or election to or on behalf of any other elective
61 office in the state or any of its subdivisions, or in connection
62 with or on behalf of any person engaged in furthering,
63 advancing, supporting, or aiding the nomination or election
64 of any candidate for any of the offices.

65 (g) It is unlawful for any person to create, establish, or
66 organize more than one political committee with the intent
67 to avoid or evade the contribution limitations contained in
68 this article.

69 (h) A person may not, directly or indirectly, make
70 contributions to a state party executive committee or caucus
71 campaign committee which, in the aggregate, are in excess
72 of the amounts permitted by §3-8-5c of this code in any
73 calendar year.

74 (i) The limitations on contributions contained in this
75 section do not apply to transfers among a state party executive
76 committee, a caucus campaign committee, and a national
77 committee of the same political party: *Provided*, That the
78 moneys transferred may only be used for voter registration and
79 get-out-the-vote activities of the state committees.

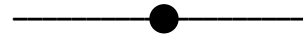
80 (j) A person may not solicit any contribution, other than
81 contributions to a campaign for or against a county or local
82 government ballot issue, from any nonelective salaried
83 employee of the state government or of any of its subdivisions:
84 *Provided*, That in no event may any person acting in a
85 supervisory role solicit a person who is a subordinate
86 employee for any contribution. A person may not coerce or
87 intimidate any nonelective salaried employee into making a
88 contribution. A person may not coerce or intimidate any
89 nonsalaried employee of the state government or any of its
90 subdivisions into engaging in or refraining from any form of
91 political activity. The provisions of this subsection may not be
92 construed to prevent any employee from making a
93 contribution or from engaging in political activity voluntarily
94 without coercion, intimidation, or solicitation.

95 (k) A person may not solicit a contribution from any
96 other person without informing the other person at the time
97 of the solicitation of the amount of any commission,
98 remuneration, or other compensation that the solicitor or
99 any other person will receive or expect to receive as a direct
100 result of the contribution being successfully collected.

101 Nothing in this subsection may be construed to apply to
102 solicitations of contributions made by any person serving as
103 an unpaid volunteer.

104 (l) A person may not place any letter, circular, flyer,
105 advertisement, election paraphernalia, solicitation material
106 or other printed or published item tending to influence
107 voting at any election in a roadside receptacle unless it is:
108 (1) Approved for placement into a roadside receptacle by
109 the business or entity owning the receptacle; and (2)
110 contains a written acknowledgment of the approval. This
111 subdivision does not apply to any printed material contained
112 in a newspaper or periodical published or distributed by the
113 owner of the receptacle. The term “roadside receptacle”
114 means any container placed by a newspaper or periodical
115 business or entity to facilitate home or personal delivery of
116 a designated newspaper or periodical to its customers.

117 (m) Any person violating any provision of this section
118 is guilty of a misdemeanor and, upon conviction thereof,
119 shall be fined not more than \$1,000, or confined in jail for
120 not more than one year, or both fined and confined.



CHAPTER 103

**(Com. Sub. for H. B. 2362 - By Delegates Miller,
Shott, Campbell, Lovejoy, Canestraro, Maynard,
Hornbuckle, Summers and Robinson)**

[Passed March 6, 2019; in effect ninety days from passage.]

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

AN ACT to amend and reenact §3-3-1 and §3-3-5c of the Code of West Virginia, 1931, as amended, all relating to emergency absentee ballots; providing that persons who become confined to a particular location on or after the seventh day preceding

an election, because of illness, injury, physical disability, immobility due to extreme advanced age, or other medical reason, may vote an emergency absentee ballot; providing that a county commission may adopt a policy extending emergency absentee voting procedures to qualified voters who are eligible to vote an emergency absentee ballot; and providing that a county clerk may require written confirmation by certain licensed medical professionals that a voter meets the criteria to vote an emergency absentee ballot based on confinement.

Be it enacted by the Legislature of West Virginia:

PREAMBLE: The Act shall be known as the “Ardala Miller Memorial Act.”

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-1. Persons eligible to vote absentee ballots.

1 (a) All registered and other qualified voters of the
2 county may vote an absentee ballot during the period of
3 early voting in person.

4 (b) Registered voters and other qualified voters in the
5 county are authorized to vote an absentee ballot by mail in
6 the following circumstances:

7 (1) Any voter who is confined to a specific location and
8 prevented from voting in person throughout the period of
9 voting in person because of:

10 (A) Illness, injury, or other medical reason;

11 (B) Physical disability or immobility due to extreme
12 advanced age; or

13 (C) Incarceration or home detention: *Provided*, That the
14 underlying conviction is not for a crime which is a felony or
15 a violation of §3-9-12, §3-9-13, or §3-9-16 of this code
16 involving bribery in an election;

17 (2) Any voter who is absent from the county throughout
18 the period and available hours for voting in person because
19 of:

20 (A) Personal or business travel;

21 (B) Attendance at a college, university, or other place of
22 education or training; or

23 (C) Employment which because of hours worked and
24 distance from the county seat make voting in person
25 impossible;

26 (3) Any voter absent from the county throughout the
27 period and available hours for voting in person and who is
28 an absent uniformed services voter or overseas voter, as
29 defined by 42 U.S.C. §1973, *et seq.*, the Uniformed and
30 Overseas Citizens Absentee Voting Act of 1986, including
31 members of the uniformed services on active duty, members
32 of the merchant marine, spouses and dependents of those
33 members on active duty and persons who reside outside the
34 United States and are qualified to vote in the last place in
35 which the person was domiciled before leaving the United
36 States;

37 (4) Any voter who is required to dwell temporarily
38 outside the county and is absent from the county throughout
39 the time for voting in person because of:

40 (A) Serving as an elected or appointed federal or state
41 officer; or

42 (B) Serving in any other documented employment
43 assignment of specific duration of four years or less;

44 (5) Any voter for whom the designated area for absentee
45 voting within the county courthouse or annex of the
46 courthouse and the voter's assigned polling place are
47 inaccessible because of his or her physical disability; and

48 (6) Any voter who is participating in the Address
49 Confidentiality Program as established by §48-28A-103 of
50 this code.

51 (c) Registered voters and other qualified voters in the
52 county may, in the following circumstances, vote an
53 emergency absentee ballot, subject to the availability of the
54 services as provided in this article:

55 (1) Any voter who is confined or expects to be confined
56 in a hospital or other duly licensed health care facility within
57 the county of residence or other authorized area, as provided
58 in this article, on the day of the election;

59 (2) Any voter who resides in a nursing home within the
60 county of residence and would be otherwise unable to vote
61 in person, providing the county commission has authorized
62 the services if the voter has resided in the nursing home for
63 a period of less than 30 days;

64 (3) Any voter who becomes confined, on or after the
65 seventh day preceding an election, to a specific location
66 within the county because of illness, injury, physical
67 disability, immobility due to advanced age, or another
68 medical reason: *Provided*, That the county clerk may
69 require a written confirmation by a licensed physician,
70 physician's assistant, or advanced practice registered nurse
71 that the voter meets the criteria of this subdivision before
72 permitting such voter to vote an emergency absentee ballot;
73 and

74 (4) Any voter who is working as a replacement poll
75 worker and is assigned to a precinct out of his or her voting
76 district, if the assignment was made after the period for
77 voting an absentee ballot in person has expired.

**§3-3-5c. Procedures for voting an emergency absentee ballot
by qualified voters.**

1 (a) Notwithstanding any other provision of this chapter,
2 a person qualified to vote an emergency absentee ballot, as

3 provided in §3-3-1(c) of this code, may vote an emergency
4 absentee ballot under the procedures established in this
5 section. The county commission may adopt a policy
6 extending the emergency absentee voting procedures to: (1)
7 Qualified voters in hospitals or other duly licensed health
8 care facilities within an adjacent county or within 35 miles
9 of the county seat; (2) qualified voters in nursing homes
10 within the county; or (3) qualified voters who become
11 confined, on or after the seventh day preceding an election,
12 to a specific location within the county because of illness,
13 injury, physical disability, immobility due to advanced age,
14 or another medical reason: *Provided*, That the policy is to
15 be adopted by the county commission at least 90 days prior
16 to the election that will be affected and a copy of the policy
17 is to be filed with the Secretary of State.

18 (b) On or before the 56th day preceding the date on
19 which any election is to be held, the official designated to
20 supervise and conduct absentee voting shall notify the
21 county commission of the number of sets of emergency
22 absentee ballot commissioners which he or she determines
23 necessary to perform the duties and functions pursuant to
24 this section.

25 (c) A set of emergency absentee ballot commissioners at-
26 large shall consist of two persons with different political party
27 affiliations appointed by the county commission in accordance
28 with the procedure prescribed for the appointment of election
29 commissioners under the provisions of §3-1-1 *et seq.* of this
30 code. Emergency absentee ballot commissioners have the
31 same qualifications and rights and take the same oath required
32 under the provisions of this chapter for commissioners of
33 elections. Emergency absentee ballot commissioners are to be
34 compensated for services and expenses in the same manner as
35 commissioners of election or poll clerks obtaining and
36 delivering election supplies under the provisions of §3-1-44 of
37 this code.

38 (d) Upon request of the voter or a member of the voter's
39 immediate family or, when the county commission has

40 adopted a policy to provide emergency absentee voting
41 services to nursing home residents within the county, upon
42 request of a staff member of the nursing home, the official
43 designated to supervise and conduct absentee voting, upon
44 receiving a proper request for voting an emergency absentee
45 ballot no earlier than the seventh day next preceding the
46 election and no later than noon of election day shall supply
47 to the emergency absentee ballot commissioners the
48 application for voting an emergency absentee ballot and the
49 balloting materials. The emergency absentee ballot
50 application is to be prescribed by the Secretary of State and
51 is to include the name, residence address and political party
52 affiliation of the voter, the date, location and reason for
53 confinement in the case of an emergency, and the name of
54 the attending physician.

55 (e) The application for an emergency absentee ballot is
56 to be signed by the person applying. If the person applying
57 for an emergency absentee ballot is unable to sign his or her
58 application because of illiteracy or physical disability, he or
59 she is to make his or her mark on the signature line provided
60 for an illiterate or disabled applicant, the mark is to be
61 witnessed. The person assisting the voter and witnessing the
62 mark of the voter shall sign his or her name in the space
63 provided.

64 (f) A declaration is to be completed and signed by each
65 of the emergency absentee ballot commissioners, stating
66 their names, the date on which they appeared at the place of
67 confinement of the person applying for an emergency
68 absentee ballot, and the particulars of the confinement.

69 (g) At least one of the emergency absentee ballot
70 commissioners receiving the balloting materials shall sign a
71 receipt which is to be attached to the application form. Each
72 of the emergency absentee ballot commissioners shall
73 deliver the materials to the absent voter, await his or her
74 completion of the application and ballot and return the
75 application and the ballot to the official designated to
76 supervise and conduct absentee voting. Upon delivering the

77 application and the voted ballot to the official, the
78 emergency absentee ballot commissioners shall sign an oath
79 that no person other than the absent voter voted the ballot.
80 The application and the voted ballot are to be returned to the
81 official designated to supervise and conduct absentee voting
82 prior to the close of the polls on election day. Any ballots
83 received by the official after the time that delivery may
84 reasonably be made but before the closing of the polls are
85 to be delivered to the canvassing board along with the
86 absentee ballots challenged in accordance with the
87 provisions of §3-3-10 of this code.

88 (h) Upon receiving the application and emergency
89 absentee ballot, the official designated to supervise and
90 conduct absentee voting shall ascertain whether the
91 application is complete, whether the voter appears to be
92 eligible to vote an emergency absentee ballot, and whether
93 the voter is properly registered to vote with the office of the
94 clerk of the county commission. If the voter is found to be
95 properly registered in the precinct shown on the application,
96 the ballot is to be delivered to the precinct election
97 commissioner pursuant to §3-3-7 of this code. If the voter is
98 found not to be registered or is otherwise ineligible to vote
99 an emergency ballot, the ballot is to be challenged for the
100 appropriate reason provided for in §3-3-10 of this code.

101 (i) If either or both of the emergency absentee ballot
102 commissioners refuse to sign any application for voting an
103 emergency absentee ballot, the voter may vote as an
104 emergency absentee and the ballot will be challenged in
105 accordance with the provisions of §3-3-10 of this code, in
106 addition to those absentee ballots subject to challenge as
107 provided in that section.

108 (j) Any voter who receives assistance in voting an
109 emergency absentee ballot shall comply with the provisions
110 of §3-3-6 of this code. Any other provisions of this chapter
111 relating to absentee ballots not altered by the provisions of
112 this section are to govern the treatment of emergency
113 absentee ballots.

●

CHAPTER 104

(H. B. 2547 - By Delegate Shott)

[Passed March 5, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2019.]

AN ACT to amend and reenact §3-9-6 of the Code of West Virginia, 1931, as amended, relating to the election prohibition zone; amending the election prohibition zone from 300 feet to 100 feet.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. ELECTRONIC VOTING SYSTEMS.

§3-9-6. Unauthorized presence in election room; 100-foot limit; penalties.

1 If any person, not herein authorized so to do, enters or
2 attempts to enter the election room, except upon a lawful
3 errand and for a proper purpose, or remains within 100 feet
4 of the outside entrance to the building housing the polling
5 place, contrary to the provisions of this chapter, he shall be
6 guilty of a misdemeanor and, on conviction thereof, shall be
7 fined not less than \$50 nor more than \$500, or confined in
8 the county jail for not more than 30 days.

9 Excepting those individuals provided for expressly in
10 this or other sections of the code, only full-time employees
11 of the Secretary of State's office or full-time employees of
12 the respective county offices of the county clerk or the
13 county prosecutor may enter or otherwise disturb the polling
14 place.



CHAPTER 105

(Com. Sub. for H. B. 2600 - By Delegates Summers and Kessinger)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §3-4A-11a and §3-4A-15 of the Code West Virginia, 1931, as amended; to amend and reenact §3-5-10, §3-5-13, and §3-5-13a of said code; and to amend and reenact §3-6-3 of said code, all relating generally to the form of ballots; providing that sample ballots required to be printed as legal advertisements ahead of elections in counties where electronic voting has been adopted may consist of a facsimile of the absentee ballot; providing that when sample ballots for the precincts within a county contain different districts for certain offices or municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order; providing that if sample ballots must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot; providing that the publisher of the newspaper containing the sample ballot shall submit a proof and arrangement of the ballot to the ballot commissioners for approval prior to publication; providing that on primary election ballots, the nonpartisan ballot for judicial elections shall appear immediately after the state ticket and immediately before the county ticket; providing that on primary election ballots, the non-judicial nonpartisan ballot shall appear immediately after the county ticket and immediately before the district ticket; and providing that on primary election ballots, the national convention ticket shall appear immediately after the district ticket, with the election for at-large delegate to the national convention appearing

immediately after the election for congressional district delegate to the national convention.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

1 (a) The board of ballot commissioners in counties using
2 ballots upon which votes may be recorded by means of
3 marking with electronically sensible ink or pencil and which
4 marks are tabulated electronically shall cause the ballots to
5 be printed or displayed upon the screens of the electronic
6 voting system for use in elections.

7 (b) (1) For the primary election, the heading of the
8 ballot, the type faces, the names and arrangement of offices
9 and the printing of names and arrangement of candidates
10 within each office are to conform as nearly as possible to
11 §3-5-13 and §3-5-13a of this code.

12 (2) For the general election, the heading of the ballot,
13 the type faces, the names and arrangement of offices and the
14 printing of names and the arrangement of candidates within
15 each office are to conform as nearly as possible to §3-6-2 of
16 this code.

17 (3) Effective with the primary election held in 2016 and
18 thereafter, the following nonpartisan elections are to be
19 separated from the partisan ballot and separately headed in
20 display type with a title clearly identifying the purpose of
21 the election and constituting a separate ballot wherever a
22 separate ballot is required under this chapter:

23 (A) Nonpartisan elections for judicial offices, by
24 division, of:

25 (i) Justice of the Supreme Court of Appeals;

26 (ii) Judge of the circuit court;

27 (iii) Family court judge; and

28 (iv) Magistrate;

29 (B) Nonpartisan elections for board of education; and

30 (C) Any question to be voted upon.

31 (4) Beginning in the primary election to be held in the
32 year 2020 and in each election thereafter, the nonpartisan
33 judicial elections described in subparagraphs (i) through
34 (iv), paragraph (A), subdivision (3), of this subsection shall
35 appear immediately after the state ticket and shall
36 immediately precede the county ticket, in the same manner
37 prescribed in §3-5-13a of this code.

38 (5) Both the face and the reverse side of the ballot may
39 contain the names of candidates only if means to ensure the
40 secrecy of the ballot are provided and lines for the signatures
41 of the poll clerks on the ballot are printed on a portion of the
42 ballot which is deposited in the ballot box and upon which
43 marks do not interfere with the proper tabulation of the
44 votes.

45 (6) The arrangement of candidates within each office is
46 to be determined in the same manner as for other electronic
47 voting systems, as prescribed in this chapter. On the general
48 election ballot for all offices, and on the primary election
49 ballot only for those offices to be filled by election, except
50 delegate to national convention, lines for entering write-in
51 votes are to be provided below the names of candidates for
52 each office, and the number of lines provided for any office
53 shall equal the number of persons to be elected, or three,
54 whichever is fewer. The words "WRITE-IN, IF ANY" are
55 to be printed, where applicable, directly under each line for
56 write-ins. The lines are to be opposite a position to mark the
57 vote.

58 (c) Except for electronic voting systems that utilize
59 screens upon which votes may be recorded by means of a
60 stylus or by means of touch, the primary election ballots are

61 to be printed in the color of ink specified by the Secretary
62 of State for the various political parties, and the general
63 election ballot is to be printed in black ink. For electronic
64 voting systems that utilize screens upon which votes may be
65 recorded by means of a stylus or by means of touch, the
66 primary ballots and the general election ballot are to be
67 printed in black ink. All ballots are to be printed, where
68 applicable, on white paper suitable for automatic tabulation
69 and are to contain a perforated stub at the top or bottom of
70 the ballot, which is to be numbered sequentially in the same
71 manner as provided in §3-5-13 of this code, or are to be
72 displayed on the screens of the electronic voting system
73 upon which votes are recorded by means of a stylus or
74 touch. The number of ballots printed and the packaging of
75 ballots for the precincts are to conform to the requirements
76 for paper ballots provided in this chapter.

77 (d) In addition to the official ballots, the ballot
78 commissioners shall provide all other materials and
79 equipment necessary to the proper conduct of the election.

§3-4A-15. Instructions and help to voters; vote-recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.

1 (a) For the instruction of the voters on any election day
2 in counties utilizing an electronic voting system that uses a
3 screen upon which votes may be recorded by means of a
4 stylus or by means of touch, the ballot commissioners shall
5 provide for each polling place a sample ballot with each
6 screen as it will appear on the devices, together with written
7 instructions regarding the operation of the devices. Upon
8 request, the election officers shall offer instruction to each
9 voter, before voting, in the operation of the vote-recording
10 device.

11 (b) The ballot commissioners shall also provide
12 facsimile ballots, at least two of which, or complete sets of
13 which, are to be posted on the walls of each polling place.
14 The facsimile diagrams are exact diagrams of the ballots or

15 screens so that the voter may become familiar with the
16 location of the parties, offices, candidates, and questions as
17 they appear on the ballot to be used in his or her precinct.

18 (c) The ballot commissioners may, with the consent of
19 the county commission, or the county commission may,
20 prepare and mail to each qualified voter at the address
21 shown on the registration books a facsimile sample of the
22 ballot or screens for his or her precinct.

23 (d) In counties where an electronic voting system has
24 been adopted, the legal ballot advertisements required by
25 §3-5-1 *et seq.* and §3-6-1 *et seq.*, which specify the
26 publication of a facsimile sample ballot, are to consist of a
27 facsimile of the absentee ballot, or a facsimile of each of the
28 electronic voting system screens with the names of the
29 candidates and the offices for which they are running shown
30 in their proper positions: *Provided*, That when the sample
31 ballots for the precincts within the county contain different
32 senatorial, delegate, magisterial, or executive committee
33 districts or when the sample ballots for precincts within a
34 city contain different municipal wards, the facsimile shall
35 be altered to include each of the various districts in the
36 appropriate order. If, in order to accommodate the size of
37 each ballot, the ballot or ballot pages must be divided
38 between more than one page, the arrangement and order
39 shall be made to conform as nearly as possible to the
40 arrangement of the ballot. The publisher of the newspaper
41 shall submit a proof of the ballot and the arrangement to the
42 ballot commissioners for approval prior to publication.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-10. Publication of sample ballots and lists of candidates.

1 (a) The ballot commissioners of each county shall
2 prepare a sample official primary ballot for each party and,
3 as the case may be, for the nonpartisan candidates to be
4 voted for at the primary election, according to the provisions

5 of this article and §3-4A-1 *et seq.* of this code, as
6 appropriate to the voting system. If any ballot issue is to be
7 voted on in the primary election, the ballot commissioners
8 shall likewise prepare a sample official ballot for that issue
9 according to the provisions of law authorizing the election.

10 (b) The facsimile sample ballot for each political party
11 and for nonpartisan candidates or ballot issues shall be
12 published as follows:

13 (1) For counties in which two or more qualified
14 newspapers publish a daily newspaper, not more than 26 nor
15 less than 20 days preceding the primary election, the ballot
16 commissioners shall publish each sample official primary
17 election ballot as a Class I-0 legal advertisement in the two
18 qualified daily newspapers of different political parties
19 within the county having the largest circulation in
20 compliance with the provisions of §59-3-1 *et seq.* of this
21 code;

22 (2) For counties having no more than one daily
23 newspaper, or having only one or more qualified
24 newspapers which publish weekly, not more than 26 nor
25 less than 20 days preceding the primary election, the ballot
26 commissioners shall publish the sample official primary
27 election ballot as a Class I legal advertisement in the
28 qualified newspaper within the county having the largest
29 circulation in compliance with the provisions of §59-3-1 *et*
30 *seq.* of this code; and

31 (3) Each facsimile sample ballot shall be a photographic
32 reproduction of the official sample ballot or ballot pages and
33 shall be printed in a size no less than 65 percent of the actual
34 size of the ballot, at the discretion of the ballot
35 commissioners: *Provided*, That in counties where an
36 electronic voting system has been adopted, the facsimile
37 sample ballot may be a photographic reproduction of the
38 absentee ballot: *Provided, however*, That when the ballots
39 for the precincts within the county contain different
40 senatorial, delegate, magisterial or executive committee

41 districts or when the ballots for precincts within a city
42 contain different municipal wards, the facsimile shall be
43 altered to include each of the various districts in the
44 appropriate order. If, in order to accommodate the size of
45 each ballot, the ballot or ballot pages must be divided onto
46 more than one page, the arrangement and order shall be
47 made to conform as nearly as possible to the arrangement of
48 the ballot. The publisher of the newspaper shall submit a
49 proof of the ballot and the arrangement to the ballot
50 commissioners for approval prior to publication.

51 (c) The ballot commissioners of each county shall
52 prepare, in the form and manner prescribed by the Secretary
53 of State, an official list of offices and candidates for each
54 office which will appear on the primary election ballot for
55 each party and, as the case may be, for the nonpartisan
56 candidates to be voted for at the primary election. All
57 information which appears on the ballot, including
58 instructions as to the number of candidates for whom votes
59 may be cast for the office, any additional language which
60 will appear on the ballot below the name of the office, any
61 identifying information relating to the candidates, such as
62 his or her residence and magisterial district or presidential
63 preference, shall be included in the list in the same order in
64 which it appears on the ballot. Following the names of all
65 candidates, the list shall include the full title, text and voting
66 positions of any issue to appear on the ballot.

67 (d) The official list of candidates and issues as provided
68 in subsection (c) of this section shall be published as
69 follows:

70 (1) For counties in which two or more qualified
71 newspapers publish a daily newspaper, on the last day on
72 which a newspaper is published immediately preceding the
73 primary election, the ballot commissioners shall publish the
74 official list of candidates and issues as a Class I-0 legal
75 advertisement in the two qualified daily newspapers of
76 different political parties within the county having the

77 largest circulation in compliance with the provisions of §59-
78 3-1 *et seq.* of this code;

79 (2) For counties having no more than one daily
80 newspaper, or having only one or more qualified
81 newspapers which publish weekly, on the last day on which
82 a newspaper is published immediately preceding the
83 primary election, the ballot commissioners shall publish the
84 sample official list of nominees and issues as a Class I legal
85 advertisement in the qualified newspaper within the county
86 having the largest circulation in compliance with the
87 provisions of §59-3-1 *et seq.* of this code;

88 (3) The publication of the official list of candidates for
89 each party and for nonpartisan candidates shall be in single
90 or double columns, as required to accommodate the type
91 size requirements as follows: (A) The words “official list of
92 candidates”, the name of the county, the words “primary
93 election”, the date of the election, the name of the political
94 party or the designation of nonpartisan candidates shall be
95 printed in all capital letters and in bold type no smaller than
96 fourteen point. The designation of the national, state, district
97 or other tickets shall be printed in all capital letters in type
98 no smaller than 14 point; (B) the title of the office shall be
99 printed in bold type no smaller than 12 point and any voting
100 instructions or other language printed below the title shall
101 be printed in bold type no smaller than 10 point; and (C) the
102 names of the candidates shall be printed in all capital letters
103 in bold type no smaller than 10 point and the residence
104 information shall be printed in type no smaller than 10 point;
105 and

106 (4) When any ballot issue is to appear on the ballot, the
107 title of that ballot shall be printed in all capital letters in bold
108 type no smaller than 14 point. The text of the ballot issue
109 shall appear in no smaller than eight point type. The ballot
110 commissioners may require the publication of the ballot
111 issue under this subsection in the facsimile sample ballot
112 format in lieu of the alternate format.

113 (e) Notwithstanding the provisions of subsections (c)
114 and (d) of this section, beginning with the primary election
115 to be held in the year 2000, the ballot commissioners of any
116 county may choose to publish a facsimile sample ballot for
117 each political party and for nonpartisan candidates or ballot
118 issues instead of the official list of offices and candidates
119 for each office for purposes of the last publication required
120 before any primary election.

§3-5-13. Form and contents of ballots.

1 The following provisions apply to the form and contents
2 of election ballots:

3 (1) The face of every primary election ballot shall
4 conform as nearly as practicable to that used at the general
5 election.

6 (2) The heading of every ballot is to be printed in display
7 type. The heading is to contain a ballot title, the name of the
8 county, the state, the words "Primary Election" and the
9 month, day and year of the election. The ballot title of the
10 political party ballots is to contain the words "Official Ballot
11 of the (Name) Party" and the official symbol of the political
12 party may be included in the heading.

13 (A) The ballot title of any separate paper ballot or
14 portion of any electronic or voting machine ballot for all
15 judicial officers shall commence with the words
16 "Nonpartisan Ballot of Election of Judicial Officers" and
17 each such office shall be listed in the following order:

18 (i) The ballot title of any separate paper ballot or portion
19 of any electronic or voting machine ballot for all justices of
20 the Supreme Court of Appeals shall contain the words
21 "Nonpartisan Ballot of Election of Justice(s) of the Supreme
22 Court of Appeals of West Virginia". The names of the
23 candidates for the Supreme Court of Appeals shall be
24 printed by division without references to political party
25 affiliation or registration.

26 (ii) The ballot title of any separate paper ballot or
27 portion of any electronic or voting machine ballot for all
28 circuit court judges in the respective circuits shall contain
29 the words “Nonpartisan Ballot of Election of Circuit Court
30 Judge(s)”. The names of the candidates for the respective
31 circuit court judge office shall be printed by division
32 without references to political party affiliation or
33 registration.

34 (iii) The ballot title of any separate paper ballot or
35 portion of any electronic or voting machine ballot for all
36 family court judges in the respective circuits shall contain
37 the words “Nonpartisan Ballot of Election of Family Court
38 Judge(s)”. The names of the candidates for the respective
39 family court judge office shall be printed by division
40 without references to political party affiliation or
41 registration.

42 (iv) The ballot title of any separate paper ballot or
43 portion of any electronic or voting machine ballot for all
44 magistrates in the respective circuits shall contain the words
45 “Nonpartisan Ballot of Election of Magistrate(s)”. The
46 names of the candidates for the respective magistrate office
47 shall be printed by division without references to political
48 party affiliation or registration.

49 (B) The ballot title of any separate paper ballot or
50 portion of any electronic or voting machine ballot for the
51 Board of Education is to contain the words “Nonpartisan
52 Ballot of Election of Members of the _____
53 County Board of Education”. The districts for which fewer
54 than two candidates may be elected and the number of
55 available seats are to be specified and the names of the
56 candidates are to be printed without reference to political
57 party affiliation and without designation as to a particular
58 term of office.

59 (C) Any other ballot or portion of a ballot on a question
60 is to have a heading which clearly states the purpose of the

61 election according to the statutory requirements for that
62 question.

63 (3) (A) For paper ballots, the heading of the ballot is to
64 be separated from the rest of the ballot by heavy lines and
65 the offices shall be arranged in columns with the following
66 headings, from left to right across the ballot: “National
67 Ticket”, “State Ticket”, “Nonpartisan Judicial Ballot”,
68 “County Ticket”, “Nonpartisan Ballot” in a nonpresidential
69 election year, “District Ticket” or, in a presidential election
70 year, “National Convention”. The columns are to be
71 separated by heavy lines. Within the columns, the offices
72 are to be arranged in the order prescribed in §3-5-13a of this
73 code.

74 (B) For voting machines, electronic voting devices and
75 any ballot tabulated by electronic means, the offices are to
76 appear in the same sequence as prescribed in §3-5-13a of
77 this code and under the same headings as prescribed in
78 paragraph (A) of this subdivision. The number of pages,
79 columns or rows, where applicable, may be modified to
80 meet the limitations of ballot size and composition
81 requirements subject to approval by the Secretary of State.

82 (C) The title of each office is to be separated from
83 preceding offices or candidates by a line and is to be printed
84 in bold type no smaller than eight point. Below the office is
85 to be printed the number of the district, if any, the number
86 of the division, if any, and the words “Vote for _____”
87 with the number to be nominated or elected or “Vote For
88 Not More Than _____” in multicandidate elections. For
89 offices in which there are limitations relating to the number
90 of candidates which may be nominated, elected or appointed
91 to or hold office at one time from a political subdivision
92 within the district or county in which they are elected, there
93 is to be a clear explanation of the limitation, as prescribed
94 by the Secretary of State, printed in bold type immediately
95 preceding the names of the candidates for those offices on
96 the ballot in every voting system. For counties in which the
97 number of county commissioners exceeds three and the total

98 number of members of the county commission is equal to
99 the number of magisterial districts within the county, the
100 office of county commission is to be listed separately for
101 each district to be filled with the name of the magisterial
102 district and the words "Vote for One" printed below the
103 name of the office: *Provided*, That the office title and
104 applicable instructions may span the width of the ballot so
105 as it is centered among the respective columns.

106 (D) The location for indicating the voter's choices on
107 the ballot is to be clearly shown. For paper ballots, other
108 than those tabulated electronically, the official primary
109 ballot is to contain a square formed in dark lines at the left
110 of each name on the ballot, arranged in a perpendicular
111 column of squares before each column of names.

112 (4) (A) The name of every candidate certified by the
113 Secretary of State or the board of ballot commissioners is to
114 be printed in capital letters in no smaller than eight point
115 type on the ballot for the appropriate precincts. Subject to
116 the rules promulgated by the Secretary of State, the name of
117 each candidate is to appear in the form set out by the
118 candidate on the certificate of announcement, but in no case
119 may the name misrepresent the identity of the candidate nor
120 may the name include any title, position, rank, degree or
121 nickname implying or inferring any status as a member of a
122 class or group or affiliation with any system of belief.

123 (B) The city of residence of every candidate, the state of
124 residence of every candidate residing outside the state, the
125 county of residence of every candidate for an office on the
126 ballot in more than one county and the magisterial district
127 of residence of every candidate for an office subject to
128 magisterial district limitations are to be printed in lower case
129 letters beneath the names of the candidates.

130 (C) The arrangement of names within each office must
131 be determined as prescribed in §3-5-13a of this code.

132 (D) If the number of candidates for an office exceeds the
133 space available on a column or ballot page and requires that
134 candidates for a single office be separated, to the extent
135 possible, the number of candidates for the office on separate
136 columns or pages are to be nearly equal and clear
137 instructions given the voter that the candidates for the office
138 are continued on the following column or page.

139 (5) When an insufficient number of candidates has filed
140 for a party to make the number of nominations allowed for
141 the office or for the voters to elect sufficient members to the
142 Board of Education or to executive committees, the vacant
143 positions on the ballot shall be filled with the words "No
144 Candidate Filed": *Provided*, That in paper ballot systems
145 which allow for write-ins to be made directly on the ballot,
146 a blank line shall be placed in any vacant position in the
147 office of Board of Education or for election to any party
148 executive committee. A line shall separate each candidate
149 from every other candidate for the same office.
150 Notwithstanding any other provision of this code, if there
151 are multiple vacant positions on a ballot for one office, the
152 multiple vacant positions which would otherwise be filled
153 with the words "No Candidate Filed" may be replaced with
154 a brief detailed description, approved by the Secretary of
155 State, indicating that there are no candidates listed for the
156 vacant positions.

157 (6) In presidential election years, the words "For
158 election in accordance with the plan adopted by the party
159 and filed with the Secretary of State" is to be printed
160 following the names of all candidates for delegate to
161 national convention.

162 (7) All paper ballots are to be printed in black ink on
163 paper sufficiently thick so that the printing or marking
164 cannot be discernible from the back: *Provided*, That no
165 paper ballot voted pursuant to the provisions of 42 U. S. C.
166 §1973, *et seq.*, the Uniformed and Overseas Citizens
167 Absentee Voting Act of 1986, or federal write-in absentee
168 ballot may be rejected due to paper type, envelope type, or

169 notarization requirement. Ballot cards and paper for printing
170 ballots using electronically sensible ink are to meet
171 minimum requirements of the tabulating systems and are to
172 conform in size and weight to ensure ease in tabulation.

173 (8) Ballots are to contain perforated tabs at the top of the
174 ballots and are to be printed with unique sequential numbers
175 from one to the highest number representing the total
176 number of ballots printed. On paper ballots, the ballot is to
177 be bordered by a solid line at least one sixteenth of an inch
178 wide and the ballot is to be trimmed to within one-half inch
179 of that border.

180 (9) On the back of every official ballot or ballot card the
181 words "Official Ballot" with the name of the county and the
182 date of the election are to be printed. Beneath the date of the
183 election there are to be two blank lines followed by the
184 words "Poll Clerks".

185 (10) The face of sample paper ballots and sample ballot
186 labels are to be like other official ballots or ballot labels
187 except that the word "sample" is to be prominently printed
188 across the front of the ballot in a manner that ensures the
189 names of candidates are not obscured and the word
190 "sample" may be printed in red ink. No printing may be
191 placed on the back of the sample.

**§3-5-13a. Order of offices and candidates on the ballot;
uniform drawing date.**

1 (a) The order of offices for state and county elections on
2 all ballots within the state shall be as prescribed herein.
3 When the office does not appear on the ballot in an election,
4 then it shall be omitted from the sequence. When an
5 unexpired term for an office appears on the ballot along with
6 a full term, the unexpired term shall appear immediately
7 below the full term.

8 NATIONAL TICKET: President (and Vice President in
9 the general election), United States Senator, member of the
10 United States House of Representatives.

11 STATE TICKET: Governor, Secretary of State,
12 Auditor, Treasurer, Commissioner of Agriculture, Attorney
13 General, State Senator, member of the House of Delegates,
14 any other multicounty office, state executive committee.

15 NONPARTISAN JUDICIAL BALLOT: Justice of the
16 Supreme Court of Appeals, judge of the circuit court, family
17 judge, magistrate.

18 COUNTY TICKET: Clerk of the circuit court, county
19 commissioner, clerk of the county commission, prosecuting
20 attorney, sheriff, assessor, surveyor, congressional district
21 executive committee, senatorial district executive
22 committee in multicounty districts, delegate district
23 executive committee in multicounty districts.

24 NONPARTISAN BALLOT: Nonpartisan elections for
25 board of education, conservation district supervisor, any
26 question to be voted upon.

27 DISTRICT TICKET: County executive committee.

28 NATIONAL CONVENTION: Delegate to the national
29 convention — congressional district, delegate to the
30 national convention — at-large.

31 (b) Except for office divisions in which no more than
32 one person has filed a certificate of announcement, the
33 arrangement of names for all offices shall be determined by
34 lot according to the following provisions:

35 (1) On the fourth Tuesday following the close of the
36 candidate filing, beginning at 9:00 a.m., a drawing by lot
37 shall be conducted in the office of the clerk of the county
38 commission in each county. Notice of the drawing shall be
39 given on the form for the certificate of announcement and
40 no further notice shall be required. The clerk of the county
41 commission shall superintend and conduct the drawing and
42 the method of conducting the drawing shall be prescribed
43 by the Secretary of State.

44 (2) Except as provided herein, the position of each
45 candidate within each office division shall be determined by
46 the position drawn for that candidate individually:
47 *Provided*, That if fewer candidates file for an office division
48 than the total number to be nominated or elected, the vacant
49 positions shall appear following the names of all candidates
50 for the office.

51 (3) Candidates for delegate to national convention who
52 have filed a commitment to a candidate for president shall
53 be listed alphabetically within the group of candidates
54 committed to the same candidate for president and
55 uncommitted candidates shall be listed alphabetically in an
56 uncommitted category. The position of each group of
57 committed candidates and uncommitted candidates shall be
58 determined by lot by drawing the names of the presidential
59 candidates and for an uncommitted category.

60 (4) A candidate or the candidate's representative may
61 attend the drawings.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-3. Publication of sample ballots and lists of candidates.

1 (a) The ballot commissioners of each county shall
2 prepare a sample official general election ballot for all
3 political party or nominees with no party affiliation unless
4 those persons have actually been nominated by an
5 independent party, nonpartisan candidates for election, if
6 any, and all ballot issues to be voted for at the general
7 election, according to the provisions of §3-4A-1 *et seq.* of
8 this code, and for any ballot issue, according to the
9 provisions of law authorizing the election.

10 (b) The facsimile sample general election ballot shall be
11 published as follows:

12 (1) For counties in which two or more qualified
13 newspapers publish a daily newspaper, not more than 26 nor

14 less than 20 days preceding the general election, the ballot
15 commissioners shall publish the sample official general
16 election ballot as a Class I-0 legal advertisement in the two
17 qualified daily newspapers of different political parties
18 within the county having the largest circulation in
19 compliance with the provisions of §59-3-1 *et seq.* of this
20 code;

21 (2) For counties having no more than one daily
22 newspaper, or having only one or more qualified
23 newspapers which publish weekly, not more than 26 nor
24 less than 20 days preceding the primary election, the ballot
25 commissioners shall publish the sample official general
26 election ballot as a Class I legal advertisement in the
27 qualified newspaper within the county having the largest
28 circulation in compliance with the provisions of §59-3-1 *et*
29 *seq.* of this code; and

30 (3) Each facsimile sample ballot shall be a photographic
31 reproduction of the official sample ballot or ballot pages and
32 shall be printed in a size no less than 65 percent of the actual
33 size of the ballot, at the discretion of the ballot
34 commissioners: *Provided*, That in counties where an
35 electronic voting system has been adopted, the facsimile
36 sample ballot may be a photographic reproduction of the
37 absentee ballot: *Provided, however*, That when the ballots
38 for the precincts within the county contain different
39 senatorial, delegate, magisterial or executive committee
40 districts or when the ballots for precincts within a city
41 contain different municipal wards, the facsimile shall be
42 altered to include each of the various districts in the
43 appropriate order. If, in order to accommodate the size of
44 each ballot, the ballot or ballot pages must be divided onto
45 more than one page, the arrangement and order shall be
46 made to conform as nearly as possible to the arrangement of
47 the ballot. The publisher of the newspaper shall submit a
48 proof of the ballot and the arrangement to the ballot
49 commissioners for approval prior to publication.

50 (c) The ballot commissioners of each county shall
51 prepare, in the form and manner prescribed by the Secretary
52 of State, an official list of offices and nominees for each
53 office which will appear on the general election ballot for
54 each political party or as nominees with no party affiliation
55 unless those persons have actually been nominated by an
56 independent party and, as the case may be, for the
57 nonpartisan candidates to be voted for at the general
58 election:

59 (1) All information which appears on the ballot,
60 including instructions as to the number of candidates for
61 whom votes may be cast for the office, any additional
62 language which will appear on the ballot below the name of
63 the office, any identifying information relating to the
64 candidates, such as his or her residence and magisterial
65 district or presidential preference. Following the names of
66 all candidates, the list shall include the full title, text and
67 voting positions of any issue to appear on the ballot.

68 (2) The order of the offices and candidates for each
69 office and the manner of designating the parties shall be as
70 follows:

71 (A) The offices shall be listed in the same order in which
72 they appear on the ballot;

73 (B) The candidates within each office for which one is
74 to be elected shall be listed in the order they appear on the
75 ballot, from left to right or from top to bottom, as the case
76 may be, and the candidate's political party affiliation or
77 independent status shall be indicated by the one- or two-
78 letter initial specifying the affiliation, placed in parenthesis
79 to the right of the candidate's name; and

80 (C) The candidates within each office for which more
81 than one is to be elected shall be arranged by political party
82 groups in the order they appear on the ballot and the
83 candidate's affiliation shall be indicated as provided in
84 paragraph (B) of this subdivision.

85 (d) The official list of candidates and issues as provided
86 in subsection (c) of this section shall be published as
87 follows:

88 (1) For counties in which two or more qualified
89 newspapers publish a daily newspaper, on the last day on
90 which a newspaper is published immediately preceding the
91 general election, the ballot commissioners shall publish the
92 official list of nominees and issues as a Class I-0 legal
93 advertisement in the two qualified daily newspapers of
94 different political parties within the county having the
95 largest circulation in compliance with the provisions of §59-
96 3-1 *et seq.* of this code;

97 (2) For counties having no more than one daily paper,
98 or having only one or more qualified newspapers which
99 publish weekly, on the last day on which a newspaper is
100 published immediately preceding the general election, the
101 ballot commissioners shall publish the sample official list of
102 nominees and issues as a Class I legal advertisement in the
103 qualified newspaper within the county having the largest
104 circulation in compliance with the provisions of §59-3-1 *et*
105 *seq.* of this code;

106 (3) The publication of the official list of nominees for
107 each party and for nonpartisan candidates shall be in single
108 or double columns, as required to accommodate the type
109 size requirements as follows:

110 (A) The words “official list of nominees and issues”, the
111 name of the county, the words “General Election” and the
112 date of the election shall be printed in all capital letters and
113 in bold type no smaller than 14 point; and

114 (B) The names of the candidates and the initial within
115 parenthesis designating the candidate’s affiliation shall be
116 printed in all capital letters in bold type no smaller than 10
117 point and the residence information shall be printed in type
118 no smaller than 10 point; and

119 (4) When any ballot issue is to appear on the ballot, the
120 title of that ballot shall be printed in all capital letters in bold
121 type no smaller than 12 point. The text of the ballot issue
122 shall appear in no smaller than eight point type. The ballot
123 commissioners may require the publication of the ballot
124 issue under this subsection in the facsimile sample ballot
125 format in lieu of the alternate format.

126 (e) Notwithstanding the provisions of subsections (c)
127 and (d) of this section, the ballot commissioners of any
128 county may choose to publish a facsimile sample general
129 election ballot, instead of the official list of candidates and
130 issues, for purposes of the last publication required before
131 any general election.



CHAPTER 106

**(S. B. 675 - By Senators Maynard, Mann, Beach,
Cline, Facemire, Hamilton, Hardesty, Prezioso,
Roberts, Rucker, Smith, Stollings and Sypolt)**

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

AN ACT to amend and reenact §22-15A-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22-15A-3a, all relating to requiring the Department of Environmental Protection to create and implement an Adopt-A-Stream Program; encouraging the removal of litter along West Virginia's rivers and streams by volunteers; and allowing the Litter Control Fund to be used to fund the program.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 15A. THE A. JAMES MANCHIN
REHABILITATION ENVIRONMENTAL ACTION PLAN.**

§22-15A-3. West Virginia litter control and recycling programs; transfer of programs and employees; additional duties of secretary; grants to counties and municipalities; and rules relating thereto.

1 (a) After July 1, 2005, the litter control and recycling
2 programs heretofore operated and managed by the Division
3 of Natural Resources shall transfer to the Department of
4 Environmental Protection.

5 With the transfer of the West Virginia Litter Control and
6 Recycling Programs from the jurisdiction of the Division of
7 Natural Resources to the jurisdiction of the Department of
8 Environmental Protection, all records, assets, and contracts,
9 along with rights and obligations thereunder, obtained or
10 signed on behalf of the Litter Control and Recycling
11 Programs are hereby transferred and assigned to the
12 Department of Environmental Protection.

13 (b) The Commissioner of the Division of Natural
14 Resources and the Secretary of the Department of
15 Environmental Protection shall determine which employees
16 of the Division of Natural Resources will be transferred to
17 the Department of Environmental Protection. All employees
18 including administrators of the litter control and recycling
19 programs are subject to being transferred to the Department
20 of Environmental Protection. Employees in the classified
21 service who have gained permanent status as of the effective
22 date of this article, enacted during the 2005 regular session
23 of the Legislature, will not be subject to further qualifying
24 examination in their respective classifications by reason of
25 the transfer required by the provisions of this section.
26 Nothing contained in this section may be construed to either
27 abridge the rights of employees within the classified service
28 of the state to the procedures and protections set forth in
29 §29-6-1 *et seq.* of this code or to preclude the
30 reclassification or reallocation of positions in accordance

31 with procedures set forth in that article. The Division of
32 Personnel shall work with the commission and secretary to
33 efficiently transfer employees from the Division of Natural
34 Resources to the Department of Environmental Protection.

35 (c) In addition to all other powers, duties, and
36 responsibilities granted and assigned to the Secretary of the
37 Department of Environmental Protection in this chapter and
38 elsewhere by law, the secretary, in the administration of the
39 West Virginia Litter Control Program created by this
40 section, shall:

41 (1) Coordinate all industry and business organizations
42 seeking to aid in the litter control and recycling effort;

43 (2) Cooperate with all local governments to accomplish
44 coordination of local litter control and recycling efforts;

45 (3) Encourage, organize, coordinate, and increase
46 public awareness of and participation in all voluntary litter
47 control and recycling campaigns, including citizen litter
48 watch programs, seeking to focus the attention of the public
49 on the litter control and recycling programs of the state and
50 local governments and of private recycling centers;

51 (4) Recommend to local governing bodies that they
52 adopt ordinances similar to the provisions of §22-15A-4 of
53 this code;

54 (5) Investigate the methods and success of techniques of
55 litter control, removal, and disposal utilized in other states,
56 and develop, encourage, organize, and coordinate local litter
57 control programs funded by grants awarded pursuant to
58 subsection (d) of this section utilizing such successful
59 techniques;

60 (6) Investigate the availability of, and apply for, funds
61 available from any and all private or public sources to be
62 used in the litter control program created by this section;

63 (7) Attract to the state persons or industries that
64 purchase, process, or use recyclable materials;

65 (8) Contract for the development, production, and
66 broadcast of radio and television messages promoting the
67 West Virginia Litter Control Program. The messages should
68 increase public awareness of and promote citizen
69 responsibility toward the reduction of litter; and

70 (9) Encourage, organize, coordinate, and increase
71 public awareness of, and participation in, a volunteer litter
72 reporting program statewide.

73 (d) All authority to promulgate rules pursuant to §29A-
74 3-1 *et seq.* of this code establishing criteria for awarding
75 direct or matching grants for the study of available research
76 and development in the fields of litter control, removal, and
77 disposal, methods for the implementation of such research
78 and development, and the development of public
79 educational programs concerning litter control is hereby
80 transferred from the Division of Natural Resources to the
81 Secretary of the Department of Environmental Protection as
82 of the effective date of enactment of this section and article
83 during the 2005 session of the Legislature: *Provided*, That
84 any rule promulgated by the Division of Natural Resources
85 relating to such grants shall remain in force and effect as
86 though promulgated by the Department of Environmental
87 Protection until the Secretary amends the rules in
88 accordance with the provisions of §29A-3-1 *et seq.* of this
89 code.

90 (e) All authority to promulgate rules pursuant to §29A-
91 3-1 *et seq.* of this code designating public areas where litter
92 receptacles shall be placed and the minimum number of
93 litter receptacles in accordance with §22-15A-4(g) of this
94 code is hereby transferred from the Division of Natural
95 Resources to the Secretary of the Department of
96 Environmental Protection as of the effective date of
97 enactment of this section and article during the 2005 session
98 of the Legislature. Any rule promulgated by the Division of

99 Natural Resources relating to littering receptacles shall
100 remain in effect as if promulgated by the secretary until
101 amended by the secretary.

102 (f) Commencing on July 1, 2019, the secretary shall
103 expend annually at least 30 percent of the moneys credited
104 to the Litter Control Fund in the previous fiscal year for
105 matching grants to counties and municipalities for the
106 initiation and administration of litter control programs. The
107 secretary shall promulgate rules pursuant to §29A-3-1 *et*
108 *seq.* of this code establishing criteria for the awarding of
109 matching grants.

110 (g) The Secretary of the Department of Environmental
111 Protection in cooperation with the Commissioner of
112 Highways, the Department of Commerce, the West Virginia
113 State Police, the United States Forestry Service, and other
114 local, state, and federal law-enforcement agencies shall be
115 responsible for the administration and enforcement of all
116 laws and rules relating to the maintenance of cleanliness and
117 improvement of appearances on and along highways, roads,
118 streets, alleys, streams, rivers, and any other private or
119 public areas of the state. These other agencies shall make
120 recommendations to the secretary, from time to time,
121 concerning means and methods of accomplishing litter
122 control consistent with the provisions of this chapter. The
123 cooperation shall include, but not be limited to, contracts
124 with the Commissioner of Highways to operate a litter
125 control program.

126 (h) All other state agencies and local governments shall
127 cooperate with the secretary in effecting the purposes of the
128 litter control program.

§22-15A-3a. Creation of Adopt-A-Stream Program required.

1 (a) The Adopt-A-Highway Program was established in
2 the late 1980s to improve the quality of the state's
3 environment by encouraging public involvement in the
4 elimination of highway litter. That program is cosponsored

5 by the Division of Highways and the Department of
6 Environmental Protection, Rehabilitation Environmental
7 Action Plan. Its objective is to save taxpayer money by
8 increasing public awareness and to serve as an educational
9 tool by focusing on the consequences of littering. The
10 program offers volunteers the opportunity to take charge of
11 their own environment by making a positive effort to create
12 a cleaner, more aesthetic place in which to live.

13 In West Virginia there are currently 25,000 volunteers
14 who regularly pick up litter on 4,000 miles of highway.
15 They have been responsible for removing more than 40
16 million pounds of litter since the program began.

17 (b) As with the Adopt-A-Highway Program,
18 individuals, families, churches, businesses, schools, civic
19 organizations, government agencies, scouting groups,
20 fraternities, and communities may participate in an
21 Adopt-A-Stream Program, which the department shall
22 create and implement. Anyone who is at least 12 years
23 old may participate. Any stream or river that is a part of
24 the West Virginia Stream Partners Program is eligible for
25 adoption, with the exception of streams or rivers
26 considered unsafe. Volunteers may select a stream or
27 river to adopt and then have it approved by the
28 department, or they may ask the department to suggest an
29 adoptable stream or river. Adopted streams must be at
30 least one mile long. The Litter Control Fund may be used
31 to support the Adopt-A-Stream Program.

32 (c) Adoptions are for a period of one year, during which
33 time one cleanup is required per year. As volunteers pick up
34 litter, bags that have been filled are placed on stream sides
35 for removal and disposal by the program. Garbage bags,
36 safety vests, safety training, traffic warning signs, and
37 gloves are to be furnished by the program.

38 (d) Adopted streams may be identified by a sign at each
39 end of the section bearing the Adopt-A-Stream logo and the
40 name of the adopter. Volunteers who complete one required

41 litter pickup within the one-year contract period shall be
42 awarded a certificate of accomplishment signed by the
43 secretary.

44 (e) The secretary may propose legislative rules pursuant
45 to §29A-3-1 *et seq.* of this code.

CHAPTER 107

(Com. Sub. for H. B. 2193 - By Delegate Shott)

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

[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §36-8-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §36-8-2a, all relating to providing for the specific escheat of United States savings bonds and all rights and legal title thereto; defining “United States savings bond”; providing that a United States savings bond held or owing in West Virginia shall be presumed abandoned if the last known address of the owner is in West Virginia and the United States savings bond has remained unclaimed and unredeemed for a period of five years after final maturity; setting forth a procedure by which abandoned, lost, stolen and destroyed United States savings bonds may escheat to the state; requiring the State Treasurer to commence a civil action for a determination that a United States savings bond shall escheat to the state; requiring service by publication; providing that claimants may appear in court to defend their right to the subject bond or bonds; requiring the court to enter a judgment vesting title in the state if the State Treasurer has substantially complied with required procedure and no valid claim is made for a United States savings bond; requiring the Treasurer to redeem United States savings bonds that have escheated to the state; permitting the State Treasurer

to pay collection and recovery costs from United States savings bond proceeds; requiring the State Treasurer to deposit remaining balance of proceeds into the Unclaimed Property Fund; permitting persons to file claims for escheated United States savings bonds or proceeds thereof after a United States savings bond has escheated to the state; and barring subsequent actions against the state after payment has been made to a claimant.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.

§36-8-1. Definitions.

1 As used in this article:

2 (1) “Administrator” means the State Treasurer.

3 (2) “Apparent owner” means a person whose name
4 appears on the records of a holder as the person entitled to
5 property held, issued or owing by the holder.

6 (3) “Business association” means a corporation, joint
7 stock company, investment company, partnership,
8 unincorporated association, joint venture, limited liability
9 company, business trust, trust company, safe deposit
10 company, financial organization, insurance company,
11 mutual fund, utility or other business entity consisting of
12 one or more persons, whether or not for profit.

13 (4) “Domicile” means the state of incorporation of a
14 corporation and the state of the principal place of business
15 of a holder other than a corporation.

16 (5) “Financial organization” means a savings and loan
17 association, bank, banking organization or credit union.

18 (6) “Holder” means a person obligated to hold for the
19 account of, or deliver or pay to, the owner property that is
20 subject to this article.

21 (7) “Insurance company” means an association,
22 corporation, or fraternal or mutual benefit organization,
23 whether or not for profit, engaged in the business of
24 providing life endowments, annuities or insurance,
25 including accident, burial, casualty, credit life, contract
26 performance, dental, disability, fidelity, fire, health,
27 hospitalization, illness, life, malpractice, marine, mortgage,
28 surety, wage protection and workers’ compensation
29 insurance.

30 (8) “Mineral” means gas; oil; coal; other gaseous, liquid
31 and solid hydrocarbons; oil shale; cement material; sand and
32 gravel; road material; building stone; chemical raw
33 material; gemstone; fissionable and nonfissionable ores;
34 colloidal and other clay; steam and other geothermal
35 resource; or any other substance defined as a mineral by the
36 law of this state.

37 (9) “Mineral proceeds” means amounts payable for the
38 extraction, production or sale of minerals, or, upon the
39 abandonment of those payments, all payments that become
40 payable thereafter. The term includes amounts payable:

41 (i) For the acquisition and retention of a mineral lease,
42 including bonuses, royalties, compensatory royalties, shut-
43 in royalties, minimum royalties and delay rentals;

44 (ii) For the extraction, production or sale of minerals,
45 including net revenue interests, royalties, overriding
46 royalties, extraction payments and production payments;
47 and

48 (iii) Under an agreement or option, including a joint
49 operating agreement, unit agreement, pooling agreement
50 and farm-out agreement.

51 (10) “Money order” includes an express money order
52 and a personal money order, on which the remitter is the
53 purchaser. The term does not include a bank money order or

54 any other instrument sold by a financial organization if the
55 seller has obtained the name and address of the payee.

56 (11) "Owner" means a person who has a legal or
57 equitable interest in property subject to this article or the
58 person's legal representative. The term includes a depositor
59 in the case of a deposit, a beneficiary in the case of a trust
60 other than a deposit in trust, and a creditor, claimant or
61 payee in the case of other property.

62 (12) "Person" means an individual, business
63 association, financial organization, estate, trust,
64 government, governmental subdivision, agency or
65 instrumentality, or any other legal or commercial entity.

66 (13) "Property" means tangible personal property
67 described in section three of this article or a fixed and
68 certain interest in intangible personal property that is held,
69 issued or owed in the course of a holder's business, or by a
70 government, governmental subdivision, agency or
71 instrumentality, and all income or increments therefrom.
72 The term includes property that is referred to as or
73 evidenced by:

74 (i) Money, a check, draft, warrant for payment issued by
75 the State of West Virginia, deposit, interest or dividend;

76 (ii) Credit balance, customer's overpayment, gift
77 certificate, security deposit, refund, credit memorandum,
78 unpaid wage, unused ticket, mineral proceeds or
79 unidentified remittance;

80 (iii) Stock or other evidence of ownership of an interest
81 in a business association or financial organization;

82 (iv) A bond, debenture, note or other evidence of
83 indebtedness;

84 (v) Money deposited to redeem stocks, bonds, coupons
85 or other securities or to make distributions;

86 (vi) An amount due and payable under the terms of an
87 annuity or insurance policy, including policies providing
88 life insurance, property and casualty insurance, workers'
89 compensation insurance or health and disability insurance;
90 and

91 (vii) An amount distributable from a trust or custodial
92 fund established under a plan to provide health, welfare,
93 pension, vacation, severance, retirement, death, stock
94 purchase, profit sharing, employee savings, supplemental
95 unemployment insurance or similar benefits.

96 (14) "Record" means information that is inscribed on a
97 tangible medium or that is stored in an electronic or other
98 medium and is retrievable in perceivable form.

99 (15) "State" means a state of the United States, the
100 District of Columbia, the Commonwealth of Puerto Rico or
101 any territory or insular possession subject to the jurisdiction
102 of the United States.

103 (16) "United States savings bond" means property,
104 tangible or intangible, in the form of a savings bond issued
105 by the United States Treasury whether in paper form,
106 electronic or paperless form, along with the proceeds
107 thereof.

108 (17) "Utility" means a person who owns or operates for
109 public use any plant, equipment, real property, franchise or
110 license for the transmission of communications or the
111 production, storage, transmission, sale, delivery or
112 furnishing of electricity, water, steam or gas as defined in
113 §24-1-2 of this code.

§36-8-2a. Escheat of United States savings bonds.

1 (a) Notwithstanding any other section of this article or
2 any other section of this code to the contrary, United States
3 savings bonds held or owing in this state by any person, or
4 issued, or owed, in the course of a holder's business, by a
5 state or other government, governmental subdivision,

6 agency, or instrumentality, and all proceeds thereof, shall be
7 presumed abandoned in the state if:

8 (1) The last known address of the owner of the United
9 States savings bond is in this state; and

10 (2) The United States savings bond has remained
11 unclaimed and unredeemed for a period of five years after
12 final maturity.

13 (b) United States savings bonds which are presumed
14 abandoned under §36-8-2a(a) of this code, including bonds
15 in the possession of the administrator, and those lost, stolen
16 or destroyed bonds registered to persons with last known
17 addresses in this state, shall, upon satisfaction by the
18 administrator of the requirements of §36-8-2a(c) through (e)
19 of this code, escheat to the State of West Virginia one year
20 after such bonds are presumed abandoned, and all property
21 rights and legal title to, and ownership of, the United States
22 savings bonds or proceeds from the bonds, including all
23 rights, powers and privileges of survivorship of any owner,
24 co-owner, or beneficiary, shall vest solely in the State of
25 West Virginia, subject only to the provisions of §36-8-15
26 and §36-8-16 of this code.

27 (c) After the expiration of the one-year period
28 prescribed in §36-8-2a(b) of this code, if no claim has been
29 filed pursuant to the provisions of §36-8-15 and §36-8-16 of
30 this code for such United States savings bonds, but before
31 such savings bonds escheat to the State of West Virginia, a
32 civil action must be commenced by the administrator in the
33 circuit court of Kanawha County, or in any other court of
34 competent jurisdiction, for a determination that such United
35 States savings bonds shall escheat to the State of West
36 Virginia.

37 (d) The administrator shall make service by publication
38 of the civil action in accordance with Rule 4(e) of the West
39 Virginia Rules of Civil Procedure.

40 (e) Any person claiming ownership, including all
41 persons claiming rights, powers and privileges of
42 survivorship and any co-owner or beneficiary, or his or her
43 agent, may appear and defend his or her rights to the subject
44 bond or bonds, and if the court is satisfied that the claimant
45 is entitled to the bond or bonds, the court may award
46 judgment in the claimant's favor. If no person files a claim
47 or appears at the hearing to substantiate a claim, or if the
48 court determines that a claimant is not entitled to the
49 property claimed by such claimant, then the court, if
50 satisfied by evidence that the administrator has substantially
51 complied with this section, shall enter a judgment that the
52 subject United States savings bonds have escheated to the
53 State of West Virginia, and all property rights and legal title
54 to and ownership of such United States savings bonds or
55 proceeds from such bonds, including all rights, powers and
56 privileges of survivorship of any owner, co-owner or
57 beneficiary, shall vest solely in the State of West Virginia.

58 (f) Upon being awarded a judgment that the United
59 States savings bond or bonds have escheated to the State of
60 West Virginia, the administrator shall redeem such United
61 States savings bonds. Upon recovery of the proceeds of any
62 United States savings bonds, the administrator shall first pay
63 all costs incident to the collection and recovery of such
64 proceeds from the proceeds of such United States savings
65 bonds and shall thereafter promptly deposit the remaining
66 balance of such proceeds into the Unclaimed Property Fund
67 pursuant to §36-8-13 of this code.

68 (g) Notwithstanding any other section of this article or
69 any other section of this code to the contrary, any person
70 making a claim for a United States savings bond escheated
71 to the State of West Virginia under this section, or for the
72 proceeds of such bond, may file a claim with the
73 administrator pursuant to §36-8-15 of this code. Upon
74 receipt of sufficient proof of the validity of such person's
75 claim, the administrator may, in his or her sole discretion,
76 pay such claim less any expenses and costs which have been

77 incurred by the state in securing full title and ownership of
78 such property by escheat. If payment has been made to any
79 claimant, no action thereafter may be maintained by any
80 other claimant against the state or any officer thereof, for,
81 or on account of, such funds.

●

CHAPTER 108

**(Com. Sub. for H. B. 2609 - By Delegates Nelson,
Criss and Espinosa)**

[Passed March 4, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §36-8-2 of the Code of West Virginia, 1931, as amended, relating to presumptions of abandonment and indication of ownership in demand, savings and time deposits held by a financial institution.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.

§36-8-2. Presumptions of abandonment.

1 (a) Property is presumed abandoned if it is unclaimed
2 by the apparent owner during the time set forth below for
3 the particular property:

4 (1) Traveler's check, 15 years after issuance;

5 (2) Money order, seven years after issuance;

6 (3) Stock or other equity interest in a business
7 association or financial organization, including a security
8 entitlement under article eight of the uniform commercial
9 code, five years after the earlier of: (i) The date of the most

10 recent dividend, stock split or other distribution unclaimed
11 by the apparent owner; or (ii) the date of the second mailing
12 of a statement of account or other notification or
13 communication that was returned as undeliverable or after
14 the holder discontinued mailings, notifications or
15 communications to the apparent owner;

16 (4) Debt of a business association or financial
17 organization, other than a bearer bond or an original issue
18 discount bond, five years after the date of the most recent
19 interest payment unclaimed by the apparent owner;

20 (5) A noninterest bearing demand, savings or time
21 deposit, including a deposit that is automatically renewable,
22 five years after the earlier of maturity or the date of the last
23 indication by the owner of interest in the property; an
24 interest bearing demand, savings or time deposit including
25 a deposit that is automatically renewable, seven years after
26 the earlier of maturity or the date of the last indication by
27 the owner of interest in the property. A deposit that is
28 automatically renewable is deemed matured for purposes of
29 this section upon its initial date of maturity, unless the
30 owner has consented to a renewal at or about the time of the
31 renewal and the consent is in writing or is evidenced by a
32 memorandum or other record on file with the holder;

33 (6) Money or credits owed to a customer as a result of a
34 retail business transaction, three years after the obligation
35 accrued;

36 (7) Gift certificate, three years after December 31, of the
37 year in which the certificate was sold, but if redeemable in
38 merchandise only, the amount abandoned is deemed to be
39 60 percent of the certificate's face value;

40 (8) Amount owed by an insurer on a life or endowment
41 insurance policy or an annuity that has matured or
42 terminated, three years after the obligation to pay arose or,
43 in the case of a policy or annuity payable upon proof of
44 death, three years after the insured has attained, or would

45 have attained if living, the limiting age under the mortality
46 table on which the reserve is based;

47 (9) Property distributable by a business association or
48 financial organization in a course of dissolution, one year
49 after the property becomes distributable;

50 (10) Property received by a court as proceeds of a class
51 action, and not distributed pursuant to the judgment, one
52 year after the distribution date;

53 (11) Property held by a court, government,
54 governmental subdivision, agency or instrumentality, one
55 year after the property becomes distributable;

56 (12) Wages or other compensation for personal services,
57 one year after the compensation becomes payable;

58 (13) Deposit or refund owed to a subscriber by a utility,
59 two years after the deposit or refund becomes payable;

60 (14) Property in an individual retirement account,
61 defined benefit plan or other account or plan that is qualified
62 for tax deferral under the income tax laws of the United
63 States, three years after the earliest of the date of the
64 distribution or attempted distribution of the property, the
65 date of the required distribution as stated in the plan or trust
66 agreement governing the plan, or the date, if determinable
67 by the holder, specified in the income tax laws of the United
68 States by which distribution of the property must begin in
69 order to avoid a tax penalty;

70 (15) Warrants for payment issued by the State of West
71 Virginia which have not been presented for payment, within
72 six months of the date of issuance;

73 (16) All funds held by a fiduciary, including the state
74 Municipal Bond Commission, for the payment of a note,
75 bond, debenture or other evidence of indebtedness, five
76 years after the principal maturity date, or if such note, bond,
77 debenture or evidence of indebtedness is called for

78 redemption on an earlier date, then the redemption date,
79 such premium or redemption date to also be applicable to
80 all interest and premium, if any, attributable to such note,
81 bond, debenture or other evidence of indebtedness; and

82 (17) All other property, five years after the owner's right
83 to demand the property or after the obligation to pay or
84 distribute the property arises, whichever first occurs.

85 (b) At the time that an interest is presumed abandoned
86 under subsection (a) of this section, any other property right
87 accrued or accruing to the owner as a result of the interest,
88 and not previously presumed abandoned, is also presumed
89 abandoned.

90 (c) Property is unclaimed if, for the applicable period set
91 forth in subsection (a) of this section, the apparent owner
92 has not communicated in writing or by other means
93 reflected in a contemporaneous record prepared by or on
94 behalf of the holder, with the holder concerning the property
95 or the account in which the property is held, and has not
96 otherwise indicated an interest in the property. A
97 communication with an owner by a person other than the
98 holder or its representative who has not in writing identified
99 the property to the owner is not an indication of interest in
100 the property by the owner.

101 (d) An indication of an owner's interest in property
102 includes:

103 (1) The presentment of a check or other instrument of
104 payment of a dividend or other distribution made with
105 respect to an account or underlying stock or other interest in
106 a business association or financial organization or, in the
107 case of a distribution made by electronic or similar means,
108 evidence that the distribution has been received;

109 (2) Owner-directed activity in the account in which the
110 property is held, including a direction by the owner to
111 increase, decrease or change the amount or type of property
112 held in the account;

113 (3) The making of a deposit to or withdrawal from a
114 bank account;

115 (4) The payment of a premium with respect to a property
116 interest in an insurance policy; but the application of an
117 automatic premium loan provision or other nonforfeiture
118 provision contained in an insurance policy does not prevent
119 a policy from maturing or terminating if the insured has died
120 or the insured or the beneficiary of the policy has otherwise
121 become entitled to the proceeds before the depletion of the
122 cash surrender value of a policy by the application of those
123 provisions; and

124 (5) For demand, savings and time deposits held by a
125 financial organization, any indication of the owner's interest
126 in any demand, savings and time deposit held by the
127 financial organization for that owner is an indication of the
128 owner's interest in all demand, savings and time deposits
129 held by that financial organization.

130 (e) Property is payable or distributable for purposes of
131 this article notwithstanding the owner's failure to make
132 demand or present an instrument or document otherwise
133 required to obtain payment.

CHAPTER 109

(H. B. 2746 - By Delegate Shott)

[By Request of the West Virginia State Bar]

[Passed February 28, 2019; in effect ninety days from passage.]

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §44-2-19a; and to amend and reenact §44-3A-24 of said code, all relating to administration of estates; requiring reports by fiduciary commissioners of unprogressed estates; allowing the county

commission to close an estate administratively; providing an appeal procedure; and providing that personal representatives are liable for failure to all persons with an interest in the assets of such an estate.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS
AGAINST ESTATES OF DECEDENTS.**

**§44-2-19a. Reports of delinquent filings and administrative
closing of unprogressed estates.**

1 (a) On the last day of December and June of each year
2 every fiduciary commissioner shall file with the county
3 clerk a list of all estates referred to him or her since the
4 effective date of this section, either generally or for a limited
5 purpose, in which any document required to be filed with
6 him or her in a specified time has not been timely filed,
7 stating the document whose filing is delinquent and the date
8 the same was due to be filed: *Provided*, That the
9 commissioner shall omit from such list any estate and any
10 document for whose filing a proper continuance has been
11 granted.

12 (b) On January 5 and July 5 of each year the county clerk
13 shall file with the county commission a like list of estates
14 since the effective date of this section in which the filing of
15 any paper is delinquent, and embrace therein the lists
16 required to be filed with him or her on the first day of such
17 month by the various commissioners. In the report filed July
18 5 of each year the county clerk shall further include in the
19 report a list of all estates referred to him or her since the
20 effective date of this section which have not been duly
21 closed within a period of three years from the opening of
22 such estate and in which no progress, or in his or her
23 opinion, unsatisfactory progress, has been made toward
24 settlement, for any cause, within the preceding 12 months.

25 (c) The county commission shall, upon the presentation
26 by the county clerk of all matters and causes reported to it

27 by the semiannual reports required herein of delinquent and
28 unprogressed estates, enter an order in the name of the
29 county commission directing the appointed personal
30 representative to file a statement to show cause why the
31 county commission should not find the personal
32 representative delinquent in his or her administration of the
33 respective estate and should not remove the personal
34 representative from office, administratively close the estate,
35 or take such other action against the personal representative
36 as may be proper:

37 (1) The order to show cause shall be mailed by the
38 county clerk to the personal representative at the last known
39 address appearing in the records of the county clerk and a
40 copy thereof shall also be mailed to the heirs at law,
41 beneficiaries under the will, any creditors who have filed
42 claims which are not released, any surety on any bond, and
43 any other person interested in the estate at their last known
44 addresses appearing in the records of the county clerk.

45 (2) The personal representative shall have 30 days after
46 the mailing of the order to show cause to file properly any
47 delinquent documents required for the administration of the
48 estate or to file a verified statement under oath stating why
49 he or she should not be found delinquent in the
50 administration of the respective estate and should not be
51 removed from office or the estate administratively closed.

52 (3) If within such 30-day time period the personal
53 representative fails to file properly the delinquent documents
54 or fails to file a verified statement or files a verified statement
55 which the county clerk upon review finds and determines does
56 not present good cause, the county clerk shall give notice of
57 such failure, delinquency, or finding to the county
58 commission, the personal representative, the heirs at law,
59 beneficiaries under the will, any creditors who have filed
60 claims which are not released, any surety on any bond, and any
61 other person interested in the estate and shall advise that the
62 personal representative shall be removed from office and such
63 other appropriate person appointed as personal representative

64 as the county commission may determine or that the estate
65 shall be administratively closed 30 days following the date of
66 such notice at a hearing thereon to be held before the county
67 commission at a date and time fixed for presentation. In
68 addition, on the first Monday of the next month, the county
69 clerk shall publish as a Class I-0 legal advertisement, a notice
70 thereof.

71 (4) The personal representative or any person interested
72 may file objection thereto at or prior to the time set by such
73 notice for presentation thereof to the county commission.
74 The commission shall proceed to hear the presentation of
75 such proposed removal or closing and findings and hear
76 interested parties, if any appear, and may enter such
77 appropriate order to approve, modify and approve, or refuse
78 to approve such proposed removal or closing and the
79 findings of the county clerk. An appeal from the decision of
80 such county commission may, without any formal bill of
81 exceptions, be taken to the circuit court of the county by the
82 personal representative or any interested party. The appeal
83 shall be tried and heard in the circuit court, or before the
84 judge thereof in vacation, on the record made before the
85 county clerk and the county commission.

86 (d) In addition, the county clerk and the fiduciary
87 commissioners, shall be empowered, and where
88 appropriate, may, on their own motion, petition the circuit
89 court to compel compliance with the provisions of this
90 chapter, in the same manner and to the same extent
91 heretofore provided in the case of commissioners of
92 accounts, or by any other proper proceeding.

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS; COUNTY OPTION.

§44-3A-24. Reports of delinquent filings.

1 (a) On the last day of December and June of each year
2 every fiduciary commissioner and special fiduciary

3 commissioner shall file with the fiduciary supervisor a list
4 of all estates referred to him or her since the effective date
5 of this section, either generally or for a limited purpose in
6 which any appraisal or other document required to be
7 filed with him or her in a specified time has not been timely
8 filed, stating the document whose filing is delinquent and
9 the date the document was due to be filed: *Provided*, That
10 the commissioner shall omit from the list any estate and any
11 document for whose filing a proper continuance has been
12 granted.

13 (b) On January 5 and July 5 of each year the fiduciary
14 supervisor shall file with the county commission a like list
15 of estates referred to him or her since the effective date of
16 this section in which the filing of any paper is delinquent,
17 and embrace therein the lists required to be filed with him
18 or her on the first day of the month by the various
19 commissioners. In the report filed July 5 of each year the
20 fiduciary supervisor shall further include in the report a list
21 of all estates referred to him or her since the effective date
22 of this section which have not been duly closed and in which
23 no progress, or in his or her opinion, unsatisfactory
24 progress, has been made toward settlement, for any cause,
25 within the preceding 12 months.

26 (c) The county commission, after consultation with the
27 fiduciary supervisor shall take care to require prompt
28 disposition of all matters and causes reported to it by the
29 semiannual reports required herein of delinquent and
30 unprogressed estates; enter an order in the name of the
31 county commission directing the appointed personal
32 representative to file a statement to show cause why the
33 county commission should not find the personal
34 representative delinquent in his or her administration of the
35 respective estate and should not remove the personal
36 representative from office; administratively close the estate;
37 or take such other action against the personal representative
38 as may be proper.

39 (1) The order to show cause shall be mailed by the
40 fiduciary supervisor to the personal representative at the last
41 known address appearing in the records of the fiduciary
42 supervisor. A copy of the order shall also be mailed to the
43 heirs at law, beneficiaries under the will, any creditors who
44 have filed claims which are not released, any surety on any
45 bond, and any other person interested in the estate at their
46 last known addresses appearing in the records of the
47 fiduciary supervisor.

48 (2) The personal representative shall have 30 days after
49 the mailing of the order to show cause to file properly any
50 delinquent documents required for the administration of the
51 estate or to file a verified statement, under oath, stating why
52 he or she should not be found delinquent in the
53 administration of the respective estate and should not be
54 removed from office or the estate administratively closed.

55 (3) If, within the 30-day time period, the personal
56 representative fails to file properly the delinquent
57 documents, or fails to file a verified statement, or files a
58 verified statement which the fiduciary supervisor upon
59 review finds and determines does not present good cause,
60 the fiduciary supervisor shall give notice of the failure,
61 delinquency, or finding to the county commission, the
62 personal representative, the heirs at law, beneficiaries under
63 the will, any creditors who have filed claims which are not
64 released, any surety on any bond, and any other person
65 interested in the estate and shall advise that the personal
66 representative shall be removed from office and such other
67 appropriate person appointed as personal representative as
68 the county commission may determine or that the estate
69 shall be administratively closed 30 days following the date
70 of the notice at a hearing thereon to be held before the
71 county commission at a date and time fixed for presentation.
72 In addition, on the first Monday of the next month, the
73 fiduciary supervisor shall publish a notice of this action as a
74 Class I-0 legal advertisement.

75 (4) The personal representative or any person interested
76 may file an objection at, or prior to, the time set by the notice
77 for presentation to the county commission. The commission
78 shall proceed to hear the presentation of the proposed
79 removal or closing and findings and hear interested parties,
80 if any appear, and may enter an appropriate order to
81 approve, modify and approve, or refuse to approve, the
82 proposed removal or closing and the findings of the
83 fiduciary supervisor. Alternatively, the commission may
84 refer the cause to a fiduciary commissioner generally for
85 supervision or for the purpose of the resolution of any
86 disputed matter. An appeal from the decision of the county
87 commission may, without any formal bill of exceptions, be
88 taken to the circuit court of the county by the personal
89 representative or any interested party. The appeal shall be
90 tried and heard in the circuit court, or before the judge
91 thereof in vacation, on the record made before the fiduciary
92 supervisor and the county commission.

93 (d) In addition, the fiduciary supervisor and the
94 fiduciary commissioners, shall be empowered, and where
95 appropriate, shall on their own motion, petition the circuit
96 court to compel compliance with the provisions of this
97 chapter, in the same manner and to the same extent
98 heretofore provided in the case of commissioners of
99 accounts, or by any other proper proceeding.



CHAPTER 110

(H. B. 2759 - By Delegate Shott)
[By Request of the West Virginia State Bar
Probate Committee]

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

AN ACT to amend and reenact §41-5-13 of the Code of West Virginia, 1931, as amended; to amend and reenact §44-1-4 of said code; and to amend said code by adding thereto a new

section, designated §44-1-14b, all relating to the administration of estates and providing for the ancillary administration of West Virginia real estate owned by nonresidents by affidavit and without administration.

Be it enacted by the Legislature of West Virginia:

CHAPTER 41. WILLS.

ARTICLE 5. PRODUCTION, PROBATE AND RECORD OF WILLS.

§41-5-13. Ancillary administration; Probate or recordation of foreign will.

1 (a) Where a will relative to any personalty or real estate
2 located or situate within this state has been proved or
3 probated outside of this state by another state or jurisdiction
4 within the United States of America, an authenticated copy
5 thereof and the certificate of probate thereof, by such other
6 state or jurisdiction may be offered for probate in this state,
7 in accordance with the provisions of §41-5-5 or §41-5-10 of
8 this code, and an ancillary personal representative, executor,
9 or administrator, as the case may be, may be appointed in
10 this state with like effect and with the same powers,
11 authorities, duties, and liabilities as are given to domiciliary
12 personal representatives, executors, and administrators
13 under the provisions of this code.

14 (b) Where a will, relative only to real estate situate
15 within this state, has been proved or probated outside of this
16 state by another state or jurisdiction within the United States
17 of America and no appointment of an ancillary personal
18 representative, executor, or administrator to administer the
19 real estate within this state is necessary for any proper
20 purpose, an authenticated copy thereof and the certificate of
21 probate thereof may be admitted to record in any county of
22 this state in which the real estate is situate by any person
23 having an interest in the real estate, including a personal
24 representative who has qualified in the other state or
25 jurisdiction.

26 (1) The interested person or personal representative
27 shall also execute and tender for recording in the county an
28 affidavit setting forth in substance:

29 (A) A description of the real estate owned by the
30 decedent at the time of his or her death situate within the
31 county in this state where the affidavit is to be recorded
32 together with its assessed value for tax purposes and its fair
33 market value at the date of death of the decedent;

34 (B) That the decedent died testate a nonresident of this
35 state and that the authenticated copy of the will and the
36 certificate of probate of the other state or jurisdiction is
37 being or has been recorded in the county; and

38 (C) The names and last known addresses of the personal
39 representative of the decedent's estate, if any, and of the
40 decedent's devisees or beneficiaries who are devised or
41 given the real estate under the will.

42 (2) The clerk of the county commission shall record and
43 index the affidavit, together with the authenticated copy of
44 the will and the certificate of probate, in the same manner
45 and upon the same fees as wills and affidavits of
46 beneficiaries or heirs are recorded and indexed in case of
47 probate administration with appointment of a personal
48 representative. The clerk of the county commission may
49 require a certified copy of the decedent's death certificate or
50 other proof of death and residence prior to fulfilling the
51 clerk's responsibilities under this chapter.

52 (3) A bond, security, or oath is not required when no
53 appointment of an ancillary personal representative,
54 executor, or administrator is made under the provisions of
55 this section.

56 (c) A document substantially in the following form may
57 be used as the affidavit provided in subsection (b) of this
58 section with the effect as prescribed in this section:

59 THE COUNTY COMMISSION OF _____
60 COUNTY, WEST VIRGINIA

61 IN RE: THE ESTATE OF _____

62 DOD: _____

63 AFFIDAVIT FOR ANCILLARY
64 ADMINISTRATION

65 OF WEST VIRGINIA REAL ESTATE

66 WITHOUT APPOINTMENT

67 (TESTATE)

68 STATE OF _____,

69 COUNTY OF _____, to-wit:

70 I, _____, whose address is
71 _____,
72 being first duly sworn, upon oath and under penalty of perjury,
73 do depose and say as follows:

74 1. The decedent, _____, died
75 testate (with a will) on _____ (date of
76 death), a resident of _____ County, State of
77 _____.

78 2. On _____ (date), the following
79 person(s) was/were appointed as the personal representative
80 of the Estate of _____ by the
81 _____ (name of foreign court), of
82 _____ (county), _____ (state), being
83 case number _____, if applicable:

84 a. Name: _____

85 Address: _____

86 b. Name: _____

87 Address: _____

88 3. An authenticated copy of the Last Will and
89 Testament dated _____ and the certificate of
90 probate of such other state or jurisdiction is being
91 furnished herewith for recording in this County.

92 4. The Decedent died owning and possessing the
93 following real estate situate in West Virginia:

	Description	County	Assessed Value	Fair Market value
a.				
b.				
c.				
d.				
	Total			

94 5. Pursuant to the provisions of the Last Will and
95 Testament of _____, the decedent
96 devised the aforesaid real estate to the following
97 beneficiaries of the estate:

98 a.Name: _____

99 Address: _____

100 Relationship to Decedent: _____

101 Share or percentage: _____

102 b.Name: _____

103 Address: _____

104 Relationship to Decedent: _____

105 Share or percentage: _____

106 c.Name: _____

107 Address: _____

108 Relationship to Decedent: _____

109 Share or percentage: _____

110 d.Name: _____

111 Address: _____

112 Relationship to Decedent: _____

113 Share or percentage: _____

114 6. The Estate of _____, the decedent, will
115 be/has been fully administered by the domiciliary personal
116 representative under the domiciliary proceedings in the
117 other state or jurisdiction. No appointment of an ancillary
118 personal representative to administer the decedent's real
119 estate within the State of West Virginia is necessary for any
120 proper purpose.

121 7. I have personal knowledge of the above facts and am
122 interested in the Estate of _____, the
123 decedent, as the () acting domiciliary personal
124 representative, () surviving spouse, () beneficiary under
125 the decedent's will, () heir at law, or () other
126 _____ (describe relationship
127 or interest). [Check one]

128 _____

129 Signature of Affiant

130 Taken, subscribed, and sworn to before me the undersigned
131 authority by _____, this
132 day of _____, 20__.

133 {seal}

134 My Commission expires: _____

135 _____

136 Notary Public

137 (d) When the authenticated copy of the will and the
138 certificate of probate is so offered, as provided in subsection
139 (a) of this section, the county commission, or the clerk
140 thereof in the vacation of the commission, to which or to
141 whom it is offered, shall presume, in the absence of
142 evidence to the contrary, that the will was duly executed and
143 admitted to probate as a will of personalty in the state or
144 country of the testator's domicile, and shall admit the copy
145 to probate as a will of personalty in this state; and if it
146 appears from the copy that the will was proved in the foreign
147 court of probate to have been so executed as to be a valid
148 will of land in this state by the laws thereof, the copy may
149 be admitted to probate as a will of real estate. But any person
150 interested may, within one year from the time the
151 authenticated copy is admitted to record, and so probated,
152 upon reasonable notice to the parties interested, object to the
153 same and have the order admitting the same to probate in
154 this state set aside, upon due and satisfactory proof that the
155 authenticated copy was not a true copy of the will, or that
156 the probate of the will has been set aside by the court by
157 which it was admitted to probate, or that the probate was
158 improperly made.

159 (e) Notwithstanding anything in this section to the
160 contrary, where an original will of a nonresident decedent
161 exists but has not been proved or probated outside of this
162 state by another state or jurisdiction within the United States
163 of America because the provisions of the laws of the state
164 or jurisdiction do not require the proof or probate of the will,
165 the original of the will may be offered for probate in this
166 state as provided in subsection (a) of this section or may be

167 admitted to record as provided in subsection (b) of this
168 section.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-4. Appointment of intestate administrator; affidavit of heirs of nonresident intestate decedent without appointment of intestate administrator.

1 (a) When a person dies intestate the jurisdiction to hear
2 and determine the right of administration of his or her estate
3 shall be in the county commission or clerk thereof during
4 the recess of the regular sessions of the county commission
5 which would have jurisdiction as to the probate of his or her
6 will, if there were one. Administration shall be granted to
7 the distributees who apply therefor, preferring first the
8 husband or wife, and then such of the others entitled to
9 distribution as the county commission or clerk shall see fit.
10 If no distributee apply for administration within 30 days
11 from the death of the intestate, the county commission or
12 clerk may grant administration to one or more of the
13 creditors of the decedent, or to any other person who shall
14 be fit.

15 (b) Notwithstanding the provisions of subsection (a) of
16 this section:

17 (1) Any person having an interest in real estate situate
18 in this state that was seized and possessed by a decedent
19 who was a nonresident of this state and who has died
20 intestate without any will, including a personal
21 representative who has qualified in another state or
22 jurisdiction, for which no appointment of an ancillary
23 personal representative or administrator to administer the
24 real estate within this state is necessary for any proper
25 purpose may execute and tender for recording in the county
26 an affidavit setting forth in substance:

27 (A) A description of the real estate owned by the
28 nonresident decedent at the time of his or her death situate
29 within the county where the affidavit is to be recorded
30 together with its assessed value for tax purposes and its fair
31 market value at the date of death of the decedent;

32 (B) That the nonresident decedent died intestate without
33 any will presented or probated in this state or in any other
34 state or jurisdiction;

35 (C) That more than 60 days have passed since the death
36 of the decedent and no personal representative or
37 administrator of the decedent's estate has been otherwise
38 appointed in this state for any proper purpose; and

39 (D) The names and last known addresses of the
40 decedent's heirs at law determined under the laws of this
41 state entitled to the real estate situate in this state.

42 (2) The clerk of the county commission shall record and
43 index the affidavit in the same manner and upon the same
44 fees as affidavits of heirs are recorded and indexed in case
45 of intestate administration with appointment of a personal
46 representative. The clerk of the county commission may
47 require a certified copy of the decedent's death certificate or
48 other proof of death and residence prior to fulfilling the
49 clerk's responsibilities under this chapter.

50 (3) A bond, security, or oath is not required when no
51 appointment of an ancillary personal representative or
52 administrator is made under the provisions of this section.

53 (c) A document substantially in the following form may
54 be used as the affidavit provided in subsection (b) of this
55 section with the effect as prescribed in this section:

56 **THE COUNTY COMMISSION OF _____**
57 **COUNTY, WEST VIRGINIA**

58 **IN RE: THE ESTATE OF** _____
 59 **DOD:** _____

60 **AFFIDAVIT FOR ANCILLARY**
 61 **ADMINISTRATION**
 62 **OF WEST VIRGINIA REAL ESTATE**
 63 **WITHOUT APPOINTMENT**
 64 **(INTESTATE)**

65 STATE OF _____,
 66 COUNTY OF _____, to-wit:

67 I, _____, whose
 68 address is _____,
 69 being first duly sworn, upon oath and under penalty of
 70 perjury, do depose and say as follows:

71 1. The decedent, _____, died
 72 on _____ (date of death), a resident of
 73 _____ County, State of _____.
 74 The decedent has left no will so far as I know, and no will
 75 of the decedent has been presented or probated in this state
 76 or in any other state or jurisdiction.

77 2. More than 60 days have passed since the death of the
 78 decedent and no personal representative or administrator of
 79 the decedent’s estate has been otherwise appointed in the
 80 State of West Virginia for any proper purpose.

81 3. A certified death certificate has been furnished herewith
 82 for filing in this County.

83 4. The Decedent died owning and possessing the following
 84 real estate situate in West Virginia:

	Description	County	Assessed Value	Fair Market value
a.				
b.				
c.				
d.				
	Total			

85 5. The decedent, _____, left as his/her
 86 heirs at law in accordance with the laws of intestate descent
 87 and distribution of the State of West Virginia the following
 88 persons:

89 a. Name: _____

90 Address: _____

91 Relationship to Decedent: _____

92 Share or percentage: _____

93 b. Name: _____

94 Address: _____

95 Relationship to Decedent: _____

96 Share or percentage: _____

97 c. Name: _____

98 Address: _____

99 Relationship to Decedent: _____

100 Share or percentage: _____

101 d.Name: _____

102 Address: _____

103 Relationship to Decedent: _____

104 Share or percentage: _____

105 6. No appointment of an ancillary personal representative to
106 administer the decedent's real estate within the State of West
107 Virginia is necessary for any proper purpose.

108 7. I have personal knowledge of the above facts and am interested
109 in the Estate of _____, the decedent, as the ()
110 acting domiciliary personal representative,

111 () surviving spouse, () beneficiary under the decedent's
112 will, () heir at law, or () other
113 _____ (describe relationship or
114 interest). [Check one]

115 _____

116 Signature of Affiant

117 Taken, subscribed, and sworn to before me the undersigned
118 authority by _____, this
119 day of _____, 20__.

120 {seal}

121 My Commission expires: _____

122 _____

123 Notary Public

§44-1-14b. Notice of ancillary filing without any administration of estate; time limits for filing of objections.

1 (a) Within 30 days of the filing of a foreign will of a
2 nonresident of this state without appointment of an ancillary

3 personal representative, executor, or administrator as
4 provided in the provisions of §41-5-13(b) of this code or
5 within 30 days of the filing of an affidavit concerning the
6 intestacy of a nonresident of this estate without appointment
7 of an ancillary intestate administrator as provided in the
8 provisions of §44-1-4(b) of this code, the clerk of the county
9 commission shall publish, once a week for two successive
10 weeks, in a newspaper of general circulation within the
11 county of the filing of the foreign will or the affidavit, a
12 notice which is to include:

13 (1) The name and last known address of the decedent;

14 (2) The name and address of the county commission
15 before whom the foreign will or affidavit has been filed and
16 a statement that no appointment or administration is being
17 made pursuant to the provisions of law but that a foreign
18 will or affidavit of heirs of the decedent has been filed with
19 the county commission;

20 (3) The name and address of the party filing the foreign
21 will or affidavit and his or her relationship to the decedent;

22 (4) The date of first publication of the notice;

23 (5) A statement that an interested person objecting to the
24 filing of the foreign will or affidavit or objecting to the
25 absence of appointment or administration being made in this
26 state must be filed with the county commission within 60
27 days after the date of first publication or 30 days of service
28 of the notice, whichever is later.

29 (b) This notice shall be published as a Class II legal
30 advertisement in compliance with the provisions of §59-3-1
31 *et seq.* of this code. The publication of the notice is
32 equivalent to personal service on creditors, devisees or
33 beneficiaries under the will, and heirs at law of the decedent.

34 (c) The party filing the foreign will or affidavit shall, not
35 later than 30 days after the date of first publication, serve a
36 copy of the notice, published pursuant to subsection (a) of

37 this section, at the last known address by first class mail,
38 postage prepaid or by personal service on the following
39 persons:

40 (1) The decedent's surviving spouse, if any;

41 (2) If there is a will, the personal representative or
42 personal representatives named therein;

43 (3) If there is a will, all devisees or beneficiaries named
44 therein;

45 (4) The heirs at law of the decedent determined under
46 the laws of this state; and

47 (5) Any known creditors of the decedent residing or
48 located in this state or who may claim a lien or interest
49 against the real estate of the decedent situate in this state.

50 (d) Any person interested in the estate who objects to
51 the filing of the foreign will or affidavit or objects to the
52 absence of appointment or administration being made in this
53 state shall file notice of an objection with the county
54 commission within 60 days after the date of the first
55 publication as required in subsection (a) of this section or
56 within 30 days after service of the notice as required by
57 subsection (c) of this section, whichever is later. If an
58 objection is not timely filed, the objection is forever barred.
59 The county commission upon receiving any timely
60 objection thereto shall schedule a hearing or hearings
61 thereon and order relief, if any, it considers proper
62 including, but not limited to, an order directing that full and
63 complete ancillary administration of the estate of the
64 nonresident decedent be made in this state.

65 (e) The clerk of the county commission shall collect a
66 fee that is the amount of the publication of the notice
67 required in this section.

●

CHAPTER 111

(Com. Sub. for S. B. 13 - By Senator Blair)

[Passed February 23, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 7, 2019.]

AN ACT to amend and reenact §29-22-18a of the Code of West Virginia, 1931, as amended, relating to distributions from the State Excess Lottery Revenue Fund to racetrack purse funds.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18a. State Excess Lottery Revenue Fund.

1 (a) The State Lottery Fund in the State Treasury which
2 is designated and known as the State Excess Lottery
3 Revenue Fund is continued. The fund consists of all
4 appropriations to the fund and all interest earned from
5 investment of the fund and any gifts, grants, or contributions
6 received by the fund. All revenues received under the
7 provisions of §29-22A-10b and §29-22A-10c of this code
8 and under §29-22B-101 *et seq.*, of this code, except the
9 amounts due the commission under §29-22B-1408(a)(1) of
10 this code, shall be deposited in the State Treasury and placed
11 into the State Excess Lottery Revenue Fund. The revenue
12 shall be disbursed in the manner provided in this section for
13 the purposes stated in this section and shall not be treated by
14 the State Auditor and the State Treasurer as part of the
15 general revenue of the state.

16 (b) For the fiscal year beginning July 1, 2002, the
17 commission shall deposit: (1) \$65 million into the
18 subaccount of the State Excess Lottery Revenue Fund
19 hereby created in the State Treasury to be known as the

20 General Purpose Account to be expended pursuant to
21 appropriation of the Legislature; (2) \$10 million into the
22 Education Improvement Fund for appropriation by the
23 Legislature to the PROMISE Scholarship Fund created in
24 §18C-7-7 of this code; (3) \$19 million into the Economic
25 Development Project Fund created in subsection (e) of this
26 section for the issuance of revenue bonds and to be spent in
27 accordance with the provisions of said subsection; (4) \$20
28 million into the School Building Debt Service Fund created
29 in §18-9D-6 of this code for the issuance of revenue bonds;
30 (5) \$40 million into the West Virginia Infrastructure Fund
31 created in §31-15A-9 of this code to be spent in accordance
32 with the provisions of said article; (6) \$10 million into the
33 Higher Education Improvement Fund for Higher Education;
34 and (7) \$5 million into the State Park Improvement Fund for
35 Park Improvements. For the fiscal year beginning July 1,
36 2003, the commission shall deposit: (1) \$65 million into the
37 General Purpose Account to be expended pursuant to
38 appropriation of the Legislature; (2) \$17 million into the
39 Education Improvement Fund for appropriation by the
40 Legislature to the PROMISE Scholarship Fund created in
41 §18C-7-7 of this code; (3) \$19 million into the Economic
42 Development Project Fund created in subsection (e) of this
43 section for the issuance of revenue bonds and to be spent in
44 accordance with the provisions of said subsection; (4) \$20
45 million into the School Building Debt Service Fund created
46 in §18-9D-6 of this code for the issuance of revenue bonds;
47 (5) \$40 million into the West Virginia Infrastructure Fund
48 created in §31-15A-9 of this code to be spent in accordance
49 with the provisions of said article; (6) \$10 million into the
50 Higher Education Improvement Fund for Higher Education;
51 and (7) \$7 million into the State Park Improvement Fund for
52 Park Improvements.

53 (c) For the fiscal year beginning July 1, 2004, and
54 subsequent fiscal years through the fiscal year ending June
55 30, 2009, the commission shall deposit: (1) \$65 million into
56 the General Purpose Account to be expended pursuant to
57 appropriation of the Legislature; (2) \$27 million into the

58 Education Improvement Fund for appropriation by the
59 Legislature to the PROMISE Scholarship Fund created in
60 §18C-7-7 of this code; (3) \$19 million into the Economic
61 Development Project Fund created in subsection (e) of this
62 section for the issuance of revenue bonds and to be spent in
63 accordance with the provisions of said subsection; (4) \$19
64 million into the School Building Debt Service Fund created
65 in §18-9D-6 of this code for the issuance of revenue bonds:
66 *Provided*, That for the fiscal year beginning July 1, 2008,
67 and subsequent fiscal years, no moneys shall be deposited
68 in the School Building Debt Service Fund pursuant to this
69 subsection and instead \$19 million shall be deposited into
70 the Excess Lottery School Building Debt Service Fund; (5)
71 \$40 million into the West Virginia Infrastructure Fund
72 created in §31-15A-9 of this code to be spent in accordance
73 with the provisions of said article; (6) \$10 million into the
74 Higher Education Improvement Fund for Higher Education;
75 and (7) \$5 million into the State Park Improvement Fund for
76 Park Improvements. No portion of the distributions made as
77 provided in this subsection and subsection (b) of this
78 section, except distributions made in connection with bonds
79 issued under subsection (e) of this section, may be used to
80 pay debt service on bonded indebtedness until after the
81 Legislature expressly authorizes issuance of the bonds and
82 payment of debt service on the bonds through statutory
83 enactment or the adoption of a concurrent resolution by both
84 houses of the Legislature. Until subsequent legislative
85 enactment or adoption of a resolution that expressly
86 authorizes issuance of the bonds and payment of debt
87 service on the bonds with funds distributed under this
88 subsection and subsection (b) of this section, except
89 distributions made in connection with bonds issued under
90 subsection (d) of this section, the distributions may be used
91 only to fund capital improvements that are not financed by
92 bonds and only pursuant to appropriation of the Legislature.

93 (d) For the fiscal year beginning July 1, 2009, and
94 subsequent fiscal years, the commission shall deposit: (1)
95 \$65 million into the General Purpose Account to be

96 expended pursuant to appropriation of the Legislature; (2)
97 \$29 million into the Education Improvement Fund for
98 appropriation by the Legislature to the PROMISE
99 Scholarship Fund created in §18C-7-7 of this code; (3) \$19
100 million into the Economic Development Project Fund
101 created in subsection (e) of this section for the issuance of
102 revenue bonds and to be spent in accordance with the
103 provisions of said subsection; (4) \$19 million into the
104 Excess Lottery School Building Debt Service Fund created
105 in §18-9D-6 of this code; (5) \$40 million into the West
106 Virginia Infrastructure Fund created in §31-15A-9 of this
107 code to be spent in accordance with the provisions of said
108 article; (6) \$10 million into the Higher Education
109 Improvement Fund for Higher Education; and (7) \$5 million
110 into the State Park Improvement Fund for Park
111 Improvements. No portion of the distributions made as
112 provided in this subsection and subsection (b) of this
113 section, except distributions made in connection with bonds
114 issued under subsection (e) of this section, may be used to
115 pay debt service on bonded indebtedness until after the
116 Legislature expressly authorizes issuance of the bonds and
117 payment of debt service on the bonds through statutory
118 enactment or the adoption of a concurrent resolution by both
119 houses of the Legislature. Until subsequent legislative
120 enactment or adoption of a resolution that expressly
121 authorizes issuance of the bonds and payment of debt
122 service on the bonds with funds distributed under this
123 subsection and subsection (b) of this section, except
124 distributions made in connection with bonds issued under
125 subsection (e) of this section, the distributions may be used
126 only to fund capital improvements that are not financed by
127 bonds and only pursuant to appropriation of the Legislature.

128 (e) The Legislature finds and declares that in order to
129 attract new business, commerce, and industry to this state,
130 to retain existing business and industry providing the
131 citizens of this state with economic security, and to advance
132 the business prosperity of this state and the economic
133 welfare of the citizens of this state, it is necessary to provide

134 public financial support for constructing, equipping,
135 improving, and maintaining economic development
136 projects, capital improvement projects, and infrastructure
137 which promote economic development in this state.

138 (1) The West Virginia Economic Development
139 Authority created and provided for in §31-15-1 *et seq.*, of
140 this code shall, by resolution, in accordance with the
141 provisions of this article and §31-15-1 *et seq.*, of this code,
142 and upon direction of the Governor, issue revenue bonds of
143 the Economic Development Authority in no more than two
144 series to pay for all or a portion of the cost of constructing,
145 equipping, improving, or maintaining projects under this
146 section or to refund the bonds at the discretion of the
147 authority. Any revenue bonds issued on or after July 1,
148 2002, which are secured by state excess lottery revenue
149 proceeds shall mature at a time or times not exceeding 30
150 years from their respective dates. The principal of and the
151 interest and redemption premium, if any, on the bonds shall
152 be payable solely from the special fund provided in this
153 section for the payment.

154 (2) The special revenue fund named the Economic
155 Development Project Fund into which shall be deposited the
156 amounts to be deposited in the fund as specified in
157 subsections (b), (c), and (d) of this section is continued. The
158 Economic Development Project Fund shall consist of all
159 such moneys, all appropriations to the fund, all interest
160 earned from investment of the fund, and any gifts, grants, or
161 contributions received by the fund. All amounts deposited
162 in the fund shall be pledged to the repayment of the
163 principal, interest, and redemption premium, if any, on any
164 revenue bonds or refunding revenue bonds authorized by
165 this section, including any and all commercially customary
166 and reasonable costs and expenses which may be incurred
167 in connection with the issuance, refunding, redemption, or
168 defeasance of the bonds. The West Virginia Economic
169 Development Authority may further provide in the
170 resolution and in the trust agreement for priorities on the

171 revenues paid into the Economic Development Project Fund
172 that are necessary for the protection of the prior rights of the
173 holders of bonds issued at different times under the
174 provisions of this section. The bonds issued pursuant to this
175 subsection shall be separate from all other bonds which may
176 be or have been issued, from time to time, under the
177 provisions of this article.

178 (3) After the West Virginia Economic Development
179 Authority has issued bonds authorized by this section and
180 after the requirements of all funds have been satisfied,
181 including any coverage and reserve funds established in
182 connection with the bonds issued pursuant to this
183 subsection, any balance remaining in the Economic
184 Development Project Fund may be used for the redemption
185 of any of the outstanding bonds issued under this subsection
186 which, by their terms, are then redeemable for the purchase
187 of the outstanding bonds at the market price, but not to
188 exceed the price, if any, at which redeemable, and all bonds
189 redeemed or purchased shall be immediately canceled and
190 shall not again be issued.

191 (4) Bonds issued under this subsection shall state on
192 their face that the bonds do not constitute a debt of the State
193 of West Virginia; that payment of the bonds, interest, and
194 charges thereon cannot become an obligation of the State of
195 West Virginia; and that the bondholders' remedies are
196 limited in all respects to the Special Revenue Fund
197 established in this subsection for the liquidation of the
198 bonds.

199 (5) The West Virginia Economic Development
200 Authority shall expend the bond proceeds from the revenue
201 bond issues authorized and directed by this section for
202 projects certified under the provision of this subsection:
203 *Provided*, That the bond proceeds shall be expended in
204 accordance with the requirements and provisions of §21-
205 5A-1 *et seq.*, of this code and either §5-22-1 *et seq.*, or §5-
206 22A-1 *et seq.*, of this code, as the case may be: *Provided*,
207 *however*, That if the bond proceeds are expended pursuant

208 to §5-22A-1 *et seq.*, of this code and if the Design-Build
209 Board created under said article determines that the
210 execution of a design-build contract in connection with a
211 project is appropriate pursuant to the criteria set forth in said
212 article and that a competitive bidding process was used in
213 selecting the design builder and awarding the contract, the
214 determination shall be conclusive for all purposes and shall
215 be considered to satisfy all the requirements of said article.

216 (6) For the purpose of certifying the projects that will
217 receive funds from the bond proceeds, a committee is
218 hereby established and comprised of the Governor, or his or
219 her designee, the Secretary of the Department of Revenue,
220 the Executive Director of the West Virginia Development
221 Office, and six persons appointed by the Governor:
222 *Provided*, That at least one citizen member must be from
223 each of the state's three congressional districts. The
224 committee shall meet as often as necessary and make
225 certifications from bond proceeds in accordance with this
226 subsection. The committee shall meet within 30 days of the
227 effective date of this section.

228 (7) Applications for grants submitted on or before July
229 1, 2002, shall be considered refiled with the committee.
230 Within 10 days from the effective date of this section as
231 amended in the year 2003, the lead applicant shall file with
232 the committee any amendments to the original application
233 that may be necessary to properly reflect changes in facts
234 and circumstances since the application was originally filed
235 with the committee.

236 (8) When determining whether or not to certify a
237 project, the committee shall take into consideration the
238 following:

239 (A) The ability of the project to leverage other sources
240 of funding;

241 (B) Whether funding for the amount requested in the
242 grant application is or reasonably should be available from
243 commercial sources;

244 (C) The ability of the project to create or retain jobs,
245 considering the number of jobs, the type of jobs, whether
246 benefits are or will be paid, the type of benefits involved,
247 and the compensation reasonably anticipated to be paid
248 persons filling new jobs or the compensation currently paid
249 to persons whose jobs would be retained;

250 (D) Whether the project will promote economic
251 development in the region and the type of economic
252 development that will be promoted;

253 (E) The type of capital investments to be made with
254 bond proceeds and the useful life of the capital investments;
255 and

256 (F) Whether the project is in the best interest of the
257 public.

258 (9) A grant may not be awarded to an individual or other
259 private person or entity. Grants may be awarded only to an
260 agency, instrumentality, or political subdivision of this state
261 or to an agency or instrumentality of a political subdivision
262 of this state.

263 The project of an individual or private person or entity
264 may be certified to receive a low-interest loan paid from
265 bond proceeds. The terms and conditions of the loan,
266 including, but not limited to, the rate of interest to be paid
267 and the period of the repayment, shall be determined by the
268 Economic Development Authority after considering all
269 applicable facts and circumstances.

270 (10) Prior to making each certification, the committee
271 shall conduct at least one public hearing, which may be held
272 outside of Kanawha County. Notice of the time, place, date,
273 and purpose of the hearing shall be published in at least one
274 newspaper in each of the three congressional districts at
275 least 14 days prior to the date of the public hearing.

276 (11) The committee may not certify a project unless the
277 committee finds that the project is in the public interest and

278 the grant will be used for a public purpose. For purposes of
279 this subsection, projects in the public interest and for a
280 public purpose include, but are not limited to:

281 (A) Sports arenas, fields, parks, stadiums, and other
282 sports and sports-related facilities;

283 (B) Health clinics and other health facilities;

284 (C) Traditional infrastructure, such as water and
285 wastewater treatment facilities, pumping facilities, and
286 transmission lines;

287 (D) State-of-the-art telecommunications infrastructure;

288 (E) Biotechnical incubators, development centers, and
289 facilities;

290 (F) Industrial parks, including construction of roads,
291 sewer, water, lighting, and other facilities;

292 (G) Improvements at state parks, such as construction,
293 expansion, or extensive renovation of lodges, cabins,
294 conference facilities, and restaurants;

295 (H) Railroad bridges, switches, and track extension or
296 spurs on public or private land necessary to retain existing
297 businesses or attract new businesses;

298 (I) Recreational facilities, such as amphitheaters,
299 walking and hiking trails, bike trails, picnic facilities,
300 restrooms, boat docking and fishing piers, basketball and
301 tennis courts, and baseball, football, and soccer fields;

302 (J) State-owned buildings that are registered on the
303 National Register of Historic Places;

304 (K) Retail facilities, including related service, parking
305 and transportation facilities, appropriate lighting,
306 landscaping, and security systems to revitalize decaying
307 downtown areas; and

308 (L) Other facilities that promote or enhance economic
309 development, educational opportunities, or tourism
310 opportunities thereby promoting the general welfare of this
311 state and its residents.

312 (12) Prior to the issuance of bonds under this subsection,
313 the committee shall certify to the Economic Development
314 Authority a list of those certified projects that will receive
315 funds from the proceeds of the bonds. Once certified, the list
316 may not thereafter be altered or amended other than by
317 legislative enactment.

318 (13) If any proceeds from sale of bonds remain after
319 paying costs and making grants and loans as provided in this
320 subsection, the surplus may be deposited in an account in
321 the State Treasury known as the Economic Development
322 Project Bridge Loan Fund administered by the Economic
323 Development Authority created in §31-15-1 *et seq.*, of this
324 code. Expenditures from the fund are not authorized from
325 collections but are to be made only in accordance with
326 appropriation by the Legislature and in accordance with the
327 provisions of §12-3-1 *et seq.*, of this code and upon
328 fulfillment of the provisions of §5A-2-1 *et seq.*, of this code.
329 Loan repayment amounts, including the portion attributable
330 to interest, shall be paid into the fund created in this
331 subdivision.

332 (f) If the commission receives revenues in an amount
333 that is not sufficient to fully comply with the requirements
334 of subsections (b), (c), (d), (i), and (m) of this section, the
335 commission shall first make the distribution to the
336 Economic Development Project Fund; second, make the
337 distribution or distributions to the other funds from which
338 debt service is to be paid; third, make the distribution to the
339 Education Improvement Fund for appropriation by the
340 Legislature to the PROMISE Scholarship Fund; and fourth,
341 make the distribution to the General Purpose Account:
342 *Provided, That*, subject to the provisions of this subsection,
343 to the extent the revenues are not pledged in support of
344 revenue bonds which are or may be issued, from time to

345 time, under this section, the revenues shall be distributed on
346 a pro rata basis.

347 (g) Each fiscal year, the commission shall, after meeting
348 the requirements of subsections (b), (c), (d), (i), and (m) of
349 this section and after transferring to the State Lottery Fund
350 created under §29-22-18 of this code an amount equal to any
351 transfer from the State Lottery Fund to the Excess Lottery
352 Fund pursuant to §29-22-18(f) of this code, deposit 50
353 percent of the amount by which annual gross revenue
354 deposited in the State Excess Lottery Revenue Fund
355 exceeds \$225 million in a fiscal year in a separate account
356 in the State Lottery Fund to be available for appropriation
357 by the Legislature.

358 (h) When bonds are issued for projects under
359 subsections (d) and (e) of this section or for the School
360 Building Authority, infrastructure, higher education, or park
361 improvement purposes described in this section that are
362 secured by profits from lotteries deposited in the State
363 Excess Lottery Revenue Fund, the Lottery Director shall
364 allocate first to the Economic Development Project Fund an
365 amount equal to one tenth of the projected annual principal,
366 interest, and coverage requirements on any and all revenue
367 bonds issued, or to be issued as certified to the Lottery
368 Director; and second, to the fund or funds from which debt
369 service is paid on bonds issued under this section for the
370 School Building Authority, infrastructure, higher education,
371 and park improvements an amount equal to one tenth of the
372 projected annual principal, interest, and coverage
373 requirements on any and all revenue bonds issued, or to be
374 issued as certified to the Lottery Director. In the event there
375 are insufficient funds available in any month to transfer the
376 amounts required pursuant to this subsection, the deficiency
377 shall be added to the amount transferred in the next
378 succeeding month in which revenues are available to
379 transfer the deficiency.

380 (i) Prior to the distributions provided in subsection (d)
381 of this section, the Lottery Commission shall deposit into

382 the General Revenue Fund amounts necessary to provide
383 reimbursement for the refundable credit allowable under
384 §11-21-21 of this code.

385 (j)(1) The Legislature considers the following as
386 priorities in the expenditure of any surplus revenue funds:

387 (A) Providing salary and/or increment increases for
388 professional educators and public employees;

389 (B) Providing adequate funding for the Public
390 Employees Insurance Agency; and

391 (C) Providing funding to help address the shortage of
392 qualified teachers and substitutes in areas of need, both in
393 number of teachers and in subject matter areas.

394 (2) The provisions of this subsection may not be
395 construed by any court to require any appropriation or any
396 specific appropriation or level of funding for the purposes
397 set forth in this subsection.

398 (k) The Legislature further directs the Governor to focus
399 resources on the creation of a prescription drug program for
400 senior citizens by pursuing a Medicaid waiver to offer
401 prescription drug services to senior citizens; by
402 investigating the establishment of purchasing agreements
403 with other entities to reduce costs; by providing discount
404 prices or rebate programs for seniors; by coordinating
405 programs offered by pharmaceutical manufacturers that
406 provide reduced cost or free drugs; by coordinating a
407 collaborative effort among all state agencies to ensure the
408 most efficient and cost-effective program possible for the
409 senior citizens of this state; and by working closely with the
410 state's congressional delegation to ensure that a national
411 program is implemented. The Legislature further directs
412 that the Governor report his or her progress back to the Joint
413 Committee on Government and Finance on an annual basis
414 until a comprehensive program has been fully implemented.

415 (l) After all of the expenditures in subsections (a)
416 through (i) of this section have been satisfied in any fiscal
417 year, the next \$2 million shall be distributed as follows:

418 (1) On the last day of the fiscal year that begins on July
419 1, 2010, and for each fiscal year thereafter, 46 percent shall
420 be placed in the general purse fund of a thoroughbred
421 racetrack licensee that did not participate in the
422 Thoroughbred Development Fund for at least four
423 consecutive calendar years prior to December 31, 1992, for
424 payment of regular purses;

425 (2) Forty-three and one-half percent shall be distributed
426 to the racing commission special account — unredeemed
427 pari-mutuel tickets, established on behalf of a thoroughbred
428 racetrack licensee that did participate in the Thoroughbred
429 Development Fund for at least four consecutive calendar
430 years prior to December 31, 1992;

431 (3) Five and one-half percent shall be distributed to the
432 racing commission special account — unredeemed pari-
433 mutuel tickets, established on behalf of a thoroughbred
434 racetrack licensee that did not participate in the
435 Thoroughbred Development Fund for at least four
436 consecutive calendar years prior to December 31, 1992; and

437 (4) Five percent shall be distributed to the racing
438 commission special account — Greyhound Breeding
439 Development Fund.

440 (m) For the fiscal year beginning July 1, 2019, and
441 subsequent fiscal years, the commission shall deposit \$11
442 million to be distributed into the special funds established
443 by the respective licensees and used for the payment of
444 regular purses in addition to the other amounts provided in
445 §19-23-1 *et seq.* of this code; such distribution shall be on a
446 pro rata basis based upon the actual purse earnings of each
447 such licensee as specified in §29-22A-10(c)(2) and §29-
448 22A-10b(a)(2) of this code.

●

CHAPTER 112

(S. B. 27 - By Senator Blair)

[Passed February 5, 2019; in effect ninety days from passage.]

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

AN ACT to amend and reenact §29-22-9 of the Code of West Virginia, 1931, as amended, relating to types of lottery games to be conducted by the state Lottery Commission; removing restrictions on where certain traditional lottery games may be played; and conforming language to recently enacted legislation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. STATE LOTTERY ACT.

§29-22-9. Initiation and operation of lottery; restrictions; prohibited themes, games, machines, or devices; distinguishing numbers; winner selection; public drawings; witnessing of results; testing and inspection of equipment; price of tickets; claim for and payment of prizes; invalid, counterfeit tickets; estimated prizes and odds of winning; participant bound by lottery rules and validation procedures; security procedures; additional games; electronic and computer systems.

- 1 (a) The commission shall initiate operation of the state
- 2 lottery on a continuous basis at the earliest feasible and
- 3 practical time, first initiating operation of the preprinted
- 4 instant winner type lottery. The lottery shall be initiated and
- 5 shall continue to be operated so as to produce the maximum
- 6 amount of net revenues to benefit the public purpose
- 7 described in this article consonant with the public good.
- 8 Other state government departments, boards, commissions,

9 agencies, and their officers shall cooperate with the Lottery
10 Commission so as to aid the Lottery Commission in
11 fulfilling these objectives.

12 (b) The commission shall promulgate rules and
13 regulations specifying the types of lottery games to be
14 conducted by the lottery. These rules and regulations shall
15 provide that:

16 (1) No lottery may use the results of any amateur or
17 professional sporting event, dog race, or horse race to
18 determine the winner except as authorized under §29-22D-
19 1 *et seq.* of this code.

20 (2) Electronic video lottery systems must include a
21 central site system of monitoring the lottery terminals
22 utilizing an online or dial-up inquiry.

23 (3) In a lottery utilizing a ticket, each ticket shall bear a
24 unique number distinguishing it from each other ticket.

25 (4) No lottery utilizing a machine may use machines
26 which dispense coins or currency.

27 (5) Selection of the winner must be predicted totally on
28 chance.

29 (6) Any drawings or winner selections shall be held in
30 public and witnessed by an independent accountant
31 designated by the director for such purposes.

32 (7) All lottery equipment and materials shall be
33 regularly inspected and tested, before and after any
34 drawings or winner selections, by independent qualified
35 technicians.

36 (8) The director shall establish the price for each lottery
37 and determine the method of selecting winners and the
38 manner of payment of prizes, including providing for
39 payment by the purchase of annuities for prizes payable in
40 installments.

41 (9) All claims for prizes shall be examined and no prize
42 shall be paid as a result of altered, stolen, or counterfeit
43 tickets or materials, or which fail to meet validation rules or
44 regulations established for a lottery. No prize shall be paid
45 more than once and, in the event of a binding determination
46 by the commission that more than one person is entitled to
47 a particular prize, the sole remedy of the claimants shall be
48 the award to each of them of an equal share in the single
49 prize.

50 (10) A detailed tabulation of the estimated number of
51 prizes of each particular prize denomination that are
52 expected to be awarded in each lottery, or the estimated
53 odds of winning such prizes shall be printed on any lottery
54 ticket, where feasible, or in descriptive materials, and shall
55 be available at the offices of the commission.

56 (11) No prizes shall be paid which are invalid and not
57 contemplated by the prize structure of the lottery involved.

58 (12) By purchasing a ticket or participation in a lottery,
59 a participant agrees to abide by, and be bound by, the lottery
60 rules which apply to the lottery or game play involved. An
61 abbreviated form of such rules may appear on tickets and
62 shall appear on descriptive materials and shall be available
63 at the offices of the commission. A participant in a lottery
64 agrees that the determination of whether the participant is a
65 valid winner is subject to the lottery or game play rules and
66 the winner validation tests established by the commission.
67 The determination of the winner by the commission shall be
68 final and binding upon all participants in a lottery and shall
69 not be subject to review or appeal.

70 (13) The commission shall institute such security
71 procedures as it deems necessary to ensure the honesty and
72 integrity of the winner selection process for each lottery. All
73 such security and validation procedures and techniques shall
74 be, and remain, confidential and shall not be subject to any
75 discovery procedure in any civil, judicial, administrative, or

76 other proceeding, nor subject to the provisions of §29B-1-1
77 *et seq.* of this code.

78 (c) The commission shall proceed with operation of
79 such additional lottery games, including the implementation
80 of games utilizing a variety of existing or future
81 technological advances at the earliest feasible date. The
82 commission may operate lottery games utilizing electronic
83 computers and electronic computer terminal devices and
84 systems, which systems must include a central site system
85 of monitoring the lottery terminals utilizing direct
86 communication systems, or other technological advances
87 and procedures, ensuring honesty and integrity in the
88 operation of the lottery.



CHAPTER 113

(Com. Sub. for S. B. 103 - By Senator Trump)

[Passed March 9, 2019; in effect July 1, 2019.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §29-21-6 and §29-21-13a of the Code of West Virginia, 1931, as amended, all relating generally to Public Defender Services; requiring Public Defender Services to establish and operate a division within the agency for the purpose of prosecuting writs of habeas corpus on behalf of eligible clients in the circuit courts of the state and before the Supreme Court of Appeals upon appointment by a court; transferring initial authority to review, approve, modify, or refuse panel attorney vouchers from circuit courts to Public Defender Services; providing for resubmission or reconsideration of vouchers previously modified or refused; establishing procedures for handling of modified or refused vouchers; maintaining final authority over payment of vouchers with circuit courts; authorizing the

Executive Director of Public Defender Services, with approval of the Indigent Defense Commission, to contract for noncriminal legal services; providing for payment of contracts; authorizing agency to reduce or reject vouchers or requests for payment; requiring panel attorneys to maintain time-keeping records to enable the attorney to determine time expended on a daily basis; setting record-keeping standards; requiring prompt processing and payment of vouchers; increasing the rates of compensation for panel attorneys; authorizing payment for in-court paralegal services with prior approval of the circuit court and subject to agency rule regarding maximum reimbursement; authorizing the executive director to promulgate emergency rules; and setting an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-6. Powers, duties, and limitations.

1 (a) Consistent with the provisions of this article, the
 2 agency is authorized to make grants to and contracts with
 3 public defender corporations and with individuals,
 4 partnerships, firms, corporations, and nonprofit
 5 organizations for the purpose of providing legal
 6 representation under this article and may make any other
 7 grants and contracts that are necessary to carry out the
 8 purposes and provisions of this article.

9 (b) The agency is authorized to accept and employ or
 10 dispose of in furtherance of the purposes of this article any
 11 money or property, real, personal, or mixed, tangible or
 12 intangible, received by gift, devise, bequest, or otherwise.

13 (c) The agency shall establish and the executive director
 14 or his or her designee shall operate a criminal law research
 15 center as provided in §29-21-7 of this code. This center shall
 16 undertake directly, or by grant or contract, to serve as a
 17 clearinghouse for information; to provide training and
 18 technical assistance related to the delivery of legal

19 representation; and to engage in research, except that broad
20 general, legal, or policy research unrelated to direct
21 representation of eligible clients may not be undertaken.

22 (d) The agency shall establish and the executive director
23 or his or her designee shall operate an accounting and
24 auditing division to require and monitor the compliance
25 with this article by public defender corporations and other
26 persons or entities receiving funding or compensation from
27 the agency. The accounting and auditing division shall
28 review all plans and proposals for grants and contracts and
29 shall make a recommendation of approval or disapproval to
30 the executive director. The accounting and auditing division
31 shall prepare, or cause to be prepared, reports concerning
32 the evaluation, inspection, or monitoring of public defender
33 corporations and other grantees, contractors, persons, or
34 entities receiving financial assistance under this article and
35 shall further carry out the agency's responsibilities for
36 records and reports as set forth in §29-21-18 of this code.
37 The accounting and auditing division shall require each
38 public defender corporation to submit financial statements
39 monthly and to report monthly on the billable and
40 nonbillable time of its professional employees, including
41 time used in administration of the respective offices, so as
42 to compare the time to similar time expended in nonpublic
43 law offices for similar activities. The accounting and
44 auditing division shall provide to the executive director
45 assistance in the fiscal administration of all of the agency's
46 divisions. This assistance shall include, but not be limited
47 to, budget preparation and statistical analysis.

48 (e) The agency shall establish and the executive director
49 or his or her designee shall operate an appellate advocacy
50 division for the purpose of prosecuting litigation on behalf
51 of eligible clients in the Supreme Court of Appeals. The
52 executive director or his or her designee shall be the director
53 of the appellate advocacy division. The appellate advocacy
54 division shall represent eligible clients upon appointment by
55 the circuit courts or by the Supreme Court of Appeals. The

56 division may, however, refuse the appointments due to a
57 conflict of interest or if the executive director has
58 determined the existing caseload cannot be increased
59 without jeopardizing the appellate division's ability to
60 provide effective representation. In order to effectively and
61 efficiently use the resources of the appellate division, the
62 executive director may restrict the provision of appellate
63 representation to certain types of cases. The executive
64 director may select and employ staff attorneys to perform
65 the duties prescribed by this subsection. The appellate
66 division shall maintain records of representation of eligible
67 clients for record purposes only.

68 (f) The agency shall establish and the executive director
69 or his or her designee shall operate a division within the
70 agency for the purpose of prosecuting writs of habeas
71 corpus on behalf of eligible clients in the circuit courts of
72 the state and before the Supreme Court of Appeals. The
73 executive director or his or her designee shall be the director
74 of the division. The division shall represent eligible clients
75 upon appointment by a circuit court or the Supreme Court
76 of Appeals. A court may appoint the division to represent
77 an eligible person unless the appointment would create a
78 conflict of interest or the executive director has notified the
79 court in writing that the division's existing caseload cannot
80 be increased for a specified period of time without
81 jeopardizing its ability to provide effective representation.
82 In appointing the division, a court should determine whether
83 the appointment of the division is the most effective use of
84 the office considering the grounds and legal issues raised by
85 the petitioner. The executive director may select and employ
86 staff attorneys, paraprofessionals, and investigators to
87 perform the duties prescribed by this subsection. The
88 division shall maintain records of representation of eligible
89 clients for record-keeping purposes only.

90 (g) If the executive director, with the approval of the
91 Indigent Defense Commission and the Secretary of
92 Administration, determines that the purposes of this article

93 can be furthered and costs reduced by the execution of a
94 contract with a provider of legal services in specialized
95 areas of the law, other than criminal defense or the
96 representation of respondent parents in abuse and neglect
97 proceedings, to provide legal representation to eligible
98 clients, the execution of the contract is authorized and is
99 exempt from the provisions of, and procedures adopted
100 pursuant to, §5A-3-1 *et seq.* of this code. The payment of
101 the contract amount is authorized from the funds
102 appropriated for the payment of appointed counsel fees.

103 (h) The agency may reduce or reject vouchers or
104 requests for payment submitted pursuant to §29-21-13a of
105 this code found not to be in compliance with the provisions
106 of this article, subject to the limitations set forth herein.

107 (i) The executive director may promulgate emergency
108 rules pursuant to §29A-3-15 of this code to effectuate the
109 provisions of this article as amended during the 2019 regular
110 session of the Legislature.

§29-21-13a. Compensation and expenses for panel attorneys.

1 (a) All panel attorneys shall maintain detailed and
2 accurate records of the time expended and expenses
3 incurred on behalf of eligible clients, and which records are
4 to be maintained in a form that will enable the attorney to
5 determine for any day the periods of time expended in tenths
6 of an hour on behalf of any eligible client and the total time
7 expended in tenths of an hour on that day on behalf of all
8 eligible clients: *Provided*, That in no event may panel
9 attorneys be required to maintain or submit the actual start
10 and finish times of work performed.

11 (b) Upon completion of each case, exclusive of appeal,
12 panel attorneys shall submit to Public Defender Services a
13 voucher for services. Public Defender Services shall
14 electronically acknowledge the submission of a voucher.
15 Claims for fees and expense reimbursements shall be
16 submitted to Public Defender Services on forms approved

17 by the executive director. The executive director shall
18 establish guidelines for the submission of vouchers and
19 claims for fees and expense reimbursements under this
20 section. Claims submitted more than 90 business days after
21 the last date of service shall be rejected unless, for good
22 cause, the appointing court authorizes in writing an
23 extension.

24 (c) Public Defender Services shall review the voucher
25 to determine if the time and expense claims are reasonable,
26 necessary, and valid. A voucher found to be correct shall be
27 processed and payment promptly directed within 45
28 business days of submission of the voucher.

29 (d)(1) If Public Defender Services rejects a voucher, the
30 attorney submitting the voucher shall be notified
31 electronically of the rejection and provided detailed reasons
32 for the rejection within 30 business days of submission of
33 the voucher. The attorney may resubmit the voucher
34 accompanied by copies of his or her records supporting the
35 voucher and certification from the appointing court that the
36 services or expenses were performed or incurred, and were
37 reasonable and necessary, within 15 business days of receipt
38 of notification. The executive director shall make a final
39 agency decision regarding the rejection of the voucher
40 within 15 business days of receipt of the submitted records
41 and certification. Under no circumstances may the
42 executive director have the authority or require any panel
43 attorney to submit privileged client information.

44 (2) If the final agency decision is to reject the voucher,
45 Public Defender Services shall request review of the final
46 agency decision by motion to the appointing court filed
47 within 15 business days of notice of the final agency
48 decision. After a hearing providing the attorney and Public
49 Defender Services an opportunity to be heard, the
50 appointing court shall have final authority to resolve the
51 issue of payment and to order all remedies available under
52 the West Virginia Rules of Civil Procedure.

53 (e) If Public Defender Services reduces the amount of
54 compensation claimed or reimbursement requested, the
55 attorney submitting the voucher shall be notified
56 electronically of the reduction and detailed reasons for the
57 reduction within 30 business days of the submission of the
58 voucher. The attorney may:

59 (1) Agree with the reduction and certify his or her
60 agreement electronically to Public Defender Services which
61 shall then proceed to process payment; or

62 (2) Disagree with the reduction and request payment of
63 the reduced amount while preserving the ability to contest
64 the reduction;

65 (3) An attorney proceeding pursuant to this subsection
66 shall inform Public Defender Services of his or her decision
67 by electronic means within 15 business days of receipt of
68 the notice of reduction. If there is no communication from
69 the attorney within 15 business days of receipt of the notice
70 of reduction, then the reduction is deemed to be accepted by
71 the attorney;

72 (4) The attorney may submit records and certification
73 from the appointing court that the services or expenses
74 reflected in the amount reduced were performed or incurred
75 and were reasonable and necessary. The executive director
76 shall then make a final agency decision regarding the
77 reduction within 15 business days of receipt of the
78 submitted records and certification. Under no circumstances
79 may the executive director have the authority to require any
80 panel attorney to submit privileged client information;

81 (5) If the attorney disagrees with the final agency
82 decision, and the attorney and the executive director cannot
83 reach an agreement regarding the reduction within 15
84 business days of the receipt of the notice of the final agency
85 decision, Public Defender Services shall request review of
86 the final agency decision by motion to the appointing court
87 filed within 15 business days of notice of the final agency

88 decision. After a hearing providing the attorney and Public
89 Defender Services an opportunity to be heard, the
90 appointing court shall have final authority to resolve the
91 issue of payment, and to order all remedies available under
92 the West Virginia Rules of Civil Procedure;

93 (6) If there is no communication from Public Defender
94 Services within 30 business days of the submission of the
95 voucher, the voucher is deemed to have been approved for
96 payment without reduction.

97 (f) Notwithstanding any provisions of this code to the
98 contrary, the executive director may employ in-house
99 counsel to represent Public Defender Services in hearings
100 held pursuant to this article.

101 (g) Except for the emergency rule-making provision set
102 forth in §29-21-6(h) of this code, the provisions of the
103 amendments to this article enacted during the 2019 regular
104 session of the Legislature shall be effective July 1, 2019.

105 (h) Notwithstanding any other provision of this section
106 to the contrary, Public Defender Services may pay by direct
107 bill, prior to the completion of the case, litigation expenses
108 incurred by attorneys appointed under this article.

109 (i) Notwithstanding any other provision of this section
110 to the contrary, a panel attorney may be compensated for
111 services rendered and reimbursed for expenses incurred
112 prior to the completion of the case where: (1) More than six
113 months have expired since the commencement of the panel
114 attorney's representation in the case; and (2) no prior
115 payment of attorney fees has been made to the panel
116 attorney by Public Defender Services during the case. The
117 executive director, in his or her discretion, may authorize
118 periodic payments where ongoing representation extends
119 beyond six months in duration. The amounts of any fees or
120 expenses paid to the panel attorney on an interim basis,
121 when combined with any amounts paid to the panel attorney

122 at the conclusion of the case, shall not exceed the limitations
123 on fees and expenses imposed by this section.

124 (j) In each case in which a panel attorney provides legal
125 representation under this article, and in each appeal after
126 conviction in circuit court, the panel attorney shall be
127 compensated at the following rates for actual and necessary
128 time expended for services performed and expenses
129 incurred subsequent to the effective date of this article:

130 (1) For attorney's work performed out of court,
131 compensation shall be at the rate of \$60 per hour.

132 Out-of-court work includes, but is not limited to, travel,
133 interviews of clients or witnesses, preparation of pleadings,
134 and prehearing or pretrial research;

135 (2) For attorney's work performed in court,
136 compensation shall be at the rate of \$80 per hour.

137 In-court work includes, but is not limited to, all time
138 spent awaiting hearing or trial before a judge, magistrate,
139 special master, or other judicial officer;

140 (3) Compensation for legal services performed for a
141 panel attorney by a paralegal out-of-court is to be calculated
142 using a rate of \$20 per hour and no such compensation is to
143 be paid for in-court services performed for a panel attorney
144 by a paralegal absent prior approval of the circuit court
145 before whom the panel attorney is appearing and subject to
146 maximum reimbursement amounts set by agency rule;

147 (4) The maximum amount of compensation for out-of-
148 court and in-court work under this subsection is as follows:
149 For proceedings of any kind involving felonies for which a
150 penalty of life imprisonment may be imposed, the amount
151 as the court may approve; for all other eligible proceedings,
152 \$3,000 unless the court, for good cause shown, approves
153 payment of a larger sum.

154 (k) Actual and necessary expenses incurred in providing
155 legal representation for proceedings of any kind involving
156 felonies for which a penalty of life imprisonment may be
157 imposed, including, but not limited to, expenses for travel,
158 transcripts, salaried or contracted investigative services, and
159 expert witnesses, shall be reimbursed in an amount as the
160 court may approve. For all other eligible proceedings, actual
161 and necessary expenses incurred in providing legal
162 representation, including, but not limited to, expenses for
163 travel, transcripts, salaried or contracted investigative
164 services and expert witnesses, shall be reimbursed to a
165 maximum of \$1,500 unless the court, for good cause shown,
166 approves reimbursement of a larger sum.

167 (l) Expense vouchers shall specifically set forth the
168 nature, amount, and purpose of expenses incurred and shall
169 provide receipts, invoices, or other documentation required
170 by the executive director and the State Auditor as follows:

171 (1) Reimbursement of expenses for production of
172 transcripts of proceedings reported by a court reporter is
173 limited to the cost per original page and per copy page as set
174 forth in §51-7-4 of this code;

175 (2) There may be no reimbursement of expenses for or
176 production of a transcript of a preliminary hearing before a
177 magistrate or juvenile referee, or of a magistrate court trial,
178 where the hearing or trial has also been recorded
179 electronically in accordance with the provisions of §50-5-8
180 of this code or court rule;

181 (3) Reimbursement of the expense of an appearance fee
182 for a court reporter who reports a proceeding other than one
183 described in subdivision (2) of this subsection is limited to
184 \$25. Where a transcript of a proceeding is produced, there
185 may be no reimbursement for the expense of any appearance
186 fee;

187 (4) Except for the appearance fees provided in this
188 subsection, there may be no reimbursement for hourly court

189 reporters' fees or fees for other time expended by the court
190 reporter, either at the proceeding or traveling to or from the
191 proceeding;

192 (5) Reimbursement of the cost of transcription of tapes
193 electronically recorded during preliminary hearings or
194 magistrate court trials is limited to \$1 per page;

195 (6) Reimbursement for any travel expense incurred in
196 an eligible proceeding is limited to the rates for the
197 reimbursement of travel expenses established by rules
198 promulgated by the Governor pursuant to the provisions of
199 §12-8-11 of this code and administered by the Secretary of
200 the Department of Administration pursuant to the provisions
201 of §5A-3-48 of this code;

202 (7) Reimbursement for investigative services is limited
203 to a rate of \$30 per hour for work performed by an
204 investigator.

205 (m) For purposes of compensation under this section, an
206 appeal from magistrate court to circuit court, an appeal from
207 a final order of the circuit court, or a proceeding seeking an
208 extraordinary remedy made to the Supreme Court of
209 Appeals shall be considered a separate case.

210 (n) Vouchers submitted under this section shall
211 specifically set forth the nature of the service rendered, the
212 stage of proceeding or type of hearing involved, the date and
213 place the service was rendered, and the amount of time
214 expended in each instance. All time claimed on the vouchers
215 shall be itemized to the nearest tenth of an hour. If the
216 charge against the eligible client for which services were
217 rendered is one of several charges involving multiple
218 warrants or indictments, the voucher shall indicate the fact
219 and sufficiently identify the several charges so as to enable
220 Public Defender Services to avoid a duplication of
221 compensation for services rendered. The executive director
222 shall refuse to requisition payment for any voucher which is
223 not in conformity with the recordkeeping, compensation, or

224 other provisions of this article or the voucher guidelines
225 established issued pursuant to this article and in such
226 circumstance shall return the voucher to the court or to the
227 service provider for further review or correction.

228 (o) Vouchers submitted under this section shall be
229 reimbursed within 90 days of receipt. Reimbursements after
230 90 days shall bear interest from the 91st day at the legal rate
231 in effect for the calendar year in which payment is due.

232 (p) Vouchers submitted for fees and expenses involving
233 child abuse and neglect cases shall be processed for
234 payment before processing vouchers submitted for all other
235 cases.

●

CHAPTER 114

**(S. B. 272 - By Senators Carmichael (Mr. President),
Trump, Woelfel, Palumbo and Tarr)**

[Amended and Again Passed February 21, 2019; as a result of the objections of
the Governor; in effect from passage.]
[Approved by the Governor on February 28, 2019.]

AN ACT to amend and reenact §4-5-1, §4-5-2, §4-5-3, §4-5-4, and §4-5-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §4-5-7 and §4-5-8, all relating to the Commission on Special Investigations; continuing the commission; clarifying composition and chairmanship of the commission and terms of members; redefining what constitutes a quorum for voting procedures of the commission; specifying contents of the commission's annual report; authorizing the employment of staff and the creation of certain staff positions; granting power to conduct interviews and request production from agencies of the state and its political subdivisions of books,

records, documents, papers, and tangible things, but exempting items deemed confidential under state or federal law; authorizing the issuance of written requests for production in lieu of subpoenas; authorizing the director to issue subpoenas on the commission's behalf; authorizing the commission to require an agency head to appear before the commission to answer for an agency's failure to appear or produce requested or subpoenaed material or other failure to comply with a commission investigation; providing for executive session and confidentiality rights of witnesses; updating exemption of investigative materials from public disclosure; removing requirement for pre-approval of expenses of the commission by the Joint Committee on Government and Finance; requiring that protected information provided to the commission be kept confidential, private, and secure in the same manner required of the government entity from which the information was received; providing procedures and requirements for the commission's retention and disposal of records; establishing new offenses of impersonating a commission member or staff member and of threatening or otherwise obstructing a commission member or staff; establishing criminal penalties; allowing the commission to award duty weapons to certain members on retirement; exempting the commission from the jurisdiction of the Agency for Surplus Property within the Purchasing Division of the Department of Administration with respect to the disposal of the commission's primary and secondary duty weapons; authorizing sale of surplus weapons to active and retired members of the commission's investigative staff; and updating language and terms for clarity throughout.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COMMISSION ON SPECIAL INVESTIGATIONS.

§4-5-1. Commission on Special Investigations continued; composition; appointment and terms of members.

- 1 The Commission on Special Investigations is continued.
- 2 The commission shall continue to be composed of the
- 3 President of the Senate and four members of the Senate, to be

4 appointed by the President of the Senate, no more than two of
5 whom shall be from the same political party; and the Speaker
6 of the House of Delegates and four members of the House of
7 Delegates, to be appointed by the Speaker of the House of
8 Delegates, no more than two of whom shall be appointed from
9 the same political party: *Provided*, That in the event the
10 membership of a political party is less than 15 percent in the
11 House of Delegates or Senate, then the membership of that
12 political party from the legislative house with less than 15
13 percent membership may be one from that house. The
14 commission shall be chaired by the President of the Senate and
15 the Speaker of the House of Delegates. All members appointed
16 to the commission by the commission chairs serve until their
17 successors are appointed as provided in this section.

§4-5-2. Powers and duties generally.

1 (a) The Commission on Special Investigations may, by
2 majority vote:

3 (1) Conduct a comprehensive and detailed investigation
4 into the purchasing practices and procedures of the state;

5 (2) Determine if there is reason to believe that the laws
6 or public policy of the state in connection with purchasing
7 practices and procedures have been violated or are
8 inadequate;

9 (3) Determine if any criminal or civil statutes relating to
10 the purchasing practices and procedures in this state are
11 necessary to protect and control the expenditures of money
12 by the state;

13 (4) Investigate or examine any matter involving
14 conflicts of interest, bribery of state officials, malfeasance,
15 misfeasance, or nonfeasance in office by any employee or
16 officer of the state;

17 (5) Conduct comprehensive and detailed investigations
18 to determine if any criminal or civil statutes have been
19 violated at any level of state government;

20 (6) Determine whether to recommend criminal
21 prosecution or civil action for any violation, either criminal
22 or civil, at any level of state government and, if it is
23 determined that action is necessary, to make appropriate
24 recommendation to the Attorney General, prosecuting
25 attorney, or other authority empowered to act on the
26 recommendation; and

27 (7) Make written reports deemed advisable by the
28 commission to the members of the Legislature between its
29 sessions. On the first day of each regular session of the
30 Legislature, the commission shall make an annual report on
31 its activities to the Legislature containing recommendations
32 for any proposed legislation which it considers necessary to
33 carry the recommendations into effect.

34 (b) The commission may also:

35 (1) Sit during any recess of the Senate and House of
36 Delegates;

37 (2) Recommend to the judge of any circuit court that a
38 grand jury be convened pursuant to the provisions of §52-2-
39 14 of this code to consider any matter which the commission
40 considers in the public interest and, in support thereof, make
41 available to the court and the grand jury the contents of any
42 reports, files, transcripts of hearings, or other evidence
43 pertinent to the matter;

44 (3) Employ necessary legal, technical, investigative,
45 clerical, stenographic, advisory, and other personnel and,
46 within the appropriation specified in §4-5-4 of this code, fix
47 reasonable compensation of any persons and firms that are
48 employed. The commission's investigative staff may
49 consist of a director, deputy director, senior investigators,
50 and investigators as approved by the cochairs: *Provided*,
51 That the commission may authorize certain employees of
52 the commission to administer oaths and take affidavits and
53 depositions anywhere in the state;

54 (4) Consult and confer with all public and private
55 persons and organizations, any entity of federal or state

56 government or of any political subdivision of the state, that
57 have information and data pertinent to an investigation; and
58 all state agencies and state political subdivisions shall
59 cooperate to the fullest extent with the commission;

60 (5) Call upon any entity of state government or of any
61 political subdivision of the state for any services,
62 information, and assistance the commission considers
63 advisable;

64 (6) Refer appropriate matters to the office of the United
65 States Attorney, or other appropriate state or federal law-
66 enforcement entity, and cooperate with such office in the
67 disposition of matters so referred; and

68 (7) Interview witnesses and require production from any
69 entity of state government, or of any political subdivision of
70 the state, of books, records, documents, papers, computers,
71 laptops, computer hard drives, electronic records including,
72 but not limited to, emails, electronic files, electronic
73 documents and metadata, or any other thing, in any form in
74 which it may exist, as the commission believes should be
75 examined to make a complete investigation, except where
76 the records, documents, data, or items are protected from
77 disclosure by state or federal law or privilege recognized by
78 state or federal courts: *Provided*, That a request for
79 production pursuant to this subdivision may be in the form
80 of a written letter from the director of the commission in lieu
81 of a subpoena.

82 (c) Notwithstanding any provision of this code to the
83 contrary, specific personnel may be designated by the
84 commission to carry a firearm in the course of performing his
85 or her official duties: *Provided*, That as a precondition of being
86 authorized to carry a concealed weapon in the course of their
87 official duties, any such designated personnel shall first
88 successfully complete a firearms training and certification
89 program which is equivalent to that which is required of
90 members of the State Police. A person so designated shall also
91 possess a license to carry a concealed deadly weapon in the
92 manner prescribed in §61-7-1 *et seq.* of this code.

§4-5-3. Executive sessions; hearings; subpoena power; enforcement provisions.

1 The commission may conduct proceedings in a
2 confidential executive session for the purpose of
3 establishing business, establishing policy, reviewing
4 investigations, and interrogating a witness or witnesses:
5 *Provided*, That if a witness desires a public or open hearing
6 the witness may demand an open hearing and shall not be
7 heard otherwise: *Provided, however*, That if a witness
8 desires a hearing in an executive session, the witness may
9 so request and shall not be heard otherwise. However,
10 members of the staff of the commission may be permitted
11 to attend executive sessions.

12 All witnesses appearing before the commission shall
13 testify under oath or affirmation, and any member of the
14 commission or its staff may administer oaths or affirmations
15 to such witnesses. To compel witnesses to attend a hearing
16 or produce any books, records, documents, or papers, or any
17 other tangible thing except where the records, documents,
18 data, or items are protected from disclosure by state or
19 federal law or privilege recognized by state or federal
20 courts, the commission may issue subpoenas, signed by one
21 of the cochairs: *Provided*, That the commission may
22 specifically authorize or delegate the power to its director to
23 sign subpoenas on its behalf. The subpoenas shall be served
24 by any person authorized by law to serve and execute legal
25 process, and service shall be made without charge.
26 Witnesses subpoenaed to attend hearings shall be allowed
27 the same mileage and per diem as is allowed witnesses
28 before any petit jury in this state.

29 If any person subpoenaed to appear at any hearing shall
30 refuse to appear or to answer inquiries there propounded, or
31 shall fail or refuse to produce books, records, documents,
32 papers, or any other tangible thing within his or her control
33 when the same are demanded, the commission shall report
34 the facts to the circuit court of Kanawha County or any other
35 court of competent jurisdiction and such court may compel
36 obedience to the subpoena as though such subpoena had been
37 issued by such court in the first instance: *Provided*, That prior

38 to seeking circuit court relief, the commission may, in its
39 discretion, first demand the head of the public agency in
40 which an employee has failed to appear or which has failed
41 to produce requested or subpoenaed material to appear before
42 the commission and address the basis for the failure to
43 comply and whether compliance will be forthcoming.

§4-5-4. Compensation and expenses of members; other expenses; how paid.

1 The members of the commission shall receive travel,
2 interim, and out-of-state expenses, as authorized in §4-2A-
3 6 and §4-2A-8 of this code. Such expenses and all other
4 expenses, including those incurred in the employment of
5 legal, technical, investigative, clerical, stenographic,
6 advisory, and other personnel, shall be paid from the
7 appropriation for Joint Expenses.

§4-5-5. Investigations exempt from public disclosure requirements.

1 (a) The investigations conducted by the commission and
2 the materials, in any medium, including hard copy and
3 electronic, placed in the custody of the commission as a
4 result of any such investigation are exempt from public
5 disclosure under the provisions of chapter 29B of this code.

6 (b) Notwithstanding any other provision of this code to
7 the contrary, the commission may dispose of printed
8 materials placed in its files upon a vote of the commission:
9 *Provided*, That the commission shall save copies of
10 materials filed on or after January 1, 2010, in electronic
11 form prior to their disposal.

12 (c) When the commission receives information, in any
13 form, from any office, agency, department, or branch of
14 state or local government that is bound by state or federal
15 law to maintain the confidentiality, privacy, or security of
16 the information, that governmental body shall identify to the
17 commission what information and materials are so protected
18 and identify the law or laws governing the confidentiality,
19 privacy, or security of the information. The commission

20 shall protect the confidentiality, privacy, or security of the
21 protected information in like manner and to the same level
22 as is required of the governmental body providing the
23 information to the commission. When the commission has
24 completed an investigation and no longer has a need to
25 maintain the confidential or protected information or
26 materials, the commission shall notify the entity from whom
27 the information was received and, unless requested to return
28 the information or materials, shall destroy the same in a
29 secure fashion and notify the entity from whom the
30 information was received of this destruction.

**§4-5-7. Impersonation or obstruction of commission member
or staff.**

1 (a) A person is guilty of impersonating a member or
2 employee of the Commission on Special Investigations
3 when he or she does one of the following:

4 (1) Falsely represents himself or herself to be a member
5 or employee of the commission;

6 (2) Falsely represents himself or herself to be acting
7 under the order or direction, or to have the authority, of the
8 commission or its staff; or

9 (3) Falsely presents a badge, credentials, other insignia
10 or likeness thereof, used by the commission for
11 identification as a member of the commission or its staff.

12 (b) Any person who, by threats, menaces, or acts, or
13 who forcibly or illegally hinders or obstructs or attempts to
14 hinder or obstruct a Commission on Special Investigations
15 member or employee acting in his or her official capacity,
16 is guilty of obstruction: *Provided*, That failure to produce
17 information or records at the request of a member or
18 employee of the commission is not obstruction when such
19 disclosure is prohibited by state or federal law.

20 (c) Any person who violates any provision of this
21 section is guilty of a misdemeanor and upon conviction
22 thereof, shall be fined not less than \$500 nor more than

23 \$2,500, or confined in jail for not more than one year, or
24 both fined and confined.

§4-5-8. Award of duty weapon upon retirement; disposal of other weapons used by staff.

1 (a) Upon the retirement of a member of the
2 commission's investigative staff, the cochairs of the
3 commission shall award to the retiring employee a duty
4 weapon used by the employee when that employee retires
5 honorably after having served:

6 (1) At least 20 years of actual service on the
7 commission's investigative staff;

8 (2) At least 20 years in law enforcement and an
9 additional 10 years of service on the commission's
10 investigative staff; or

11 (3) Any period of service on the commission's
12 investigative staff and retires due to total physical disability
13 resulting from his or her service to the commission.

14 (b) The award of the duty weapon shall be without charge
15 to the employee or other condition: Provided, That the cochairs
16 shall not award a duty weapon to any retiring employee whom
17 the cochairs find to be mentally incapacitated or to be a danger
18 to any person or to the community.

19 (c) The commission has the sole authority to determine
20 the manner of disposition of duty weapons of members of
21 the commission's investigative staff when replaced due to
22 age or routine wear. The commission may offer these
23 surplus weapons for sale at fair market value to any active
24 or retired member of the commission's investigative staff
25 who has been designated to carry a firearm in the course of
26 duties with the commission, with the proceeds of any sales
27 to be used to offset the cost of new weapons. Surplus duty
28 weapons may also be included as trade-ins toward the
29 purchase of new weapons.

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CHAPTER 115

(Com. Sub. for S. B. 330 - By Senators Maynard and Cline)

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

AN ACT to amend and reenact §5F-1-5 of the Code of West Virginia, 1931, as amended, relating to certain contact information being listed on the online state phone directory; clarifying the listing requirements to include employee job title and agency-provided mobile phone number; providing an exemption for listing mobile phone information; and requiring the information to be posted on the agency website.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-5. Online state phone directory.

1 (a) Each agency listed in the online state phone directory
2 shall update the employee information in the directory, as
3 required by this section, or provide the Office of Technology
4 the following information, unless it is determined by the
5 submitting agency that publishing such information could
6 cause safety concerns to the employee, reveal sensitive
7 information that should not be provided to the public at large,
8 or is detrimental to the service operations of the agency:

9 (1) Employee name and job title;

10 (2) Office location and mailing address, including name
11 of city and zip code;

12 (3) Office telephone number, including extension;

13 (4) Electronic mail address; and

14 (5) Mobile telephone number, if used as referred to in
15 §5F-1-5(e) of this code.

16 (b) The agency shall provide the Office of Technology
17 written justification if the agency does not wish to provide
18 the required information pursuant to §5F-1-5(a) of this code.

19 (c) Each agency listed in the online state phone directory
20 shall update the online state phone directory information
21 within 30 days after personnel action or event that would
22 require the agency to add, modify, or delete information
23 from the directory, or the agency shall provide that
24 information to the Office of Technology.

25 (d) The Office of Technology shall, within 30 days of
26 receipt of updated employee information from an agency,
27 make the requested changes to the online state phone directory.

28 (e) Beginning with the effective date of this amendment,
29 each agency listed in the online state phone directory shall
30 update the employee information in the directory to include the
31 information required in §5F-1-5(a) of this code for any official
32 or employee who either has a mobile telephone furnished by
33 his or her employer, or uses his or her private mobile telephone
34 during his or her employment with the state and the service is
35 paid by the employer: *Provided*, That this information shall
36 also be listed on the website of each agency.



CHAPTER 116

**(Com. Sub. for S. B. 408 - By Senators Palumbo and
Woelfel)**

[Passed March 4, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §29-21-16 of the Code of West Virginia, 1931, as amended, relating to public defender services

generally; clarifying the person to determine financial eligibility for public defender services; empowering court administrators in circuits which have one to make the eligibility determination; continuing the authority of public defender offices to make eligibility decisions in circuits with a public defender office but without a court administrator; and authorizing circuit courts to make eligibility decisions in circuits with neither a court administrator nor a public defender office.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-16. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.

1 (a) The agency shall establish and periodically review
2 and update financial guidelines for determining eligibility
3 for legal representation made available under the provisions
4 of this article. The agency shall adopt a financial affidavit
5 form for use by persons seeking legal representation made
6 available under the provisions of this article.

7 (b) All persons seeking legal representation made
8 available under the provisions of this article shall complete
9 the agency's financial affidavit form, which shall be
10 considered as an application for the provision of publicly
11 funded legal representation.

12 (c) Any juvenile shall have the right to be effectively
13 represented by counsel at all stages of proceedings brought
14 under the provisions of §49-4-701 through §49-4-725 of this
15 code. If the juvenile advises the court of his or her inability
16 to pay for counsel, the court shall require the juvenile's
17 parent or custodian to execute a financial affidavit. If the
18 financial affidavit demonstrates that neither of the juvenile's
19 parents, or, if applicable, the juvenile's custodian, has
20 sufficient assets to pay for counsel, the court shall appoint
21 counsel for the juvenile. If the financial affidavit
22 demonstrates that either of the juvenile's parents, or, if
23 applicable, the juvenile's custodian, does have sufficient

24 assets to pay for counsel, the court shall order the parent, or,
25 if applicable, the custodian, to provide, by paying for, legal
26 representation for the juvenile in the proceedings.

27 The court may disregard the assets of the juvenile's
28 parents or custodian and appoint counsel for the juvenile, as
29 provided in this section, if the court concludes, as a matter
30 of law, that the juvenile and the parent or custodian have a
31 conflict of interest that would adversely affect the juvenile's
32 right to effective representation of counsel, or concludes, as
33 a matter of law, that requiring the juvenile's parent or
34 custodian to provide legal representation for the juvenile
35 would otherwise jeopardize the best interests of the juvenile.

36 (d) In any circuit in which there exists a trial court
37 administrator, the office of the administrator shall make
38 determinations of indigency. In circuits in which a public
39 defender office is in operation and a trial court administrator
40 does not exist, all determinations of indigency shall be made
41 by a public defender office employee designated by the
42 executive director. In circuits in which no trial court
43 administrator or public defender office is in operation,
44 circuit judges shall make all determinations of eligibility.
45 The determinations shall be made after a careful review of
46 the financial affidavit submitted by the person seeking
47 representation. The review of the affidavit shall be
48 conducted in accord with the financial eligibility guidelines
49 established by the agency pursuant to subsection (a) of this
50 section. In addition to the financial eligibility guidelines, the
51 person determining eligibility shall consider other relevant
52 factors, including, but not limited to, those set forth in
53 subdivisions (1) through (9), subsection (e) of this section.
54 If there is substantial reason to doubt the accuracy of
55 information in the financial affidavit, the person
56 determining eligibility may make any inquiries necessary to
57 determine whether the affiant has truthfully and completely
58 disclosed the required financial information.

59 After reviewing all pertinent matters, the person
60 determining eligibility may find the affiant eligible to have
61 the total cost of legal representation provided by the state,
62 or may find that the total cost of providing representation

63 shall be apportioned between the state and the eligible
64 person. A person whose annual income exceeds the
65 maximum annual income level allowed for eligibility may
66 receive all or part of the necessary legal representation, or a
67 person whose income falls below the maximum annual
68 income level for eligibility may be denied all or part of the
69 necessary legal representation if the person determining
70 eligibility finds the person's particular circumstances
71 require that eligibility be allowed or disallowed, as the case
72 may be, on the basis of one or more of the nine factors set
73 forth in subsection (e) of this section. If legal representation
74 is made available to a person whose income exceeds the
75 maximum annual income level for eligibility, or if legal
76 representation is denied to a person whose income falls
77 below the maximum annual income level for eligibility, the
78 person determining eligibility shall make a written
79 statement of the reasons for the action and shall specifically
80 relate those reasons to one or more of the factors set forth in
81 subsection (e) of this section.

82 (e) The following factors shall be considered in
83 determining eligibility for legal representation made
84 available under the provisions of this article:

85 (1) Current income prospects, taking into account
86 seasonal variations in income;

87 (2) Liquid assets, assets which may provide collateral to
88 obtain funds to employ private counsel, and other assets
89 which may be liquidated to provide funds to employ private
90 counsel;

91 (3) Fixed debts and obligations, including federal, state,
92 and local taxes, and medical expenses;

93 (4) Child care, transportation, and other expenses
94 necessary for employment;

95 (5) Age or physical infirmity of resident family
96 members;

97 (6) Whether the person seeking publicly funded legal
98 representation has made reasonable and diligent efforts to
99 obtain private legal representation, and the results of those
100 efforts;

101 (7) The cost of obtaining private legal representation
102 with respect to the particular matter in which assistance is
103 sought;

104 (8) Whether the person seeking publicly funded legal
105 representation has posted a cash bond for bail or has
106 obtained release on bond for bail through the services of a
107 professional bondsman for compensation and the amount
108 and source of the money provided for the bond;

109 (9) The consequences for the individual if legal
110 assistance is denied.

111 (f) Legal representation requested by the affiant may not
112 be denied, in whole or part, unless the affiant can obtain
113 legal representation without undue financial hardship. A
114 person determined to be ineligible by public defender
115 personnel may have the initial determination reviewed by a
116 local circuit judge who may amend, modify, or rewrite the
117 initial determination. At any stage of the proceedings a
118 circuit court may determine a prior finding of eligibility was
119 incorrect or has become incorrect as the result of the
120 affiant's changed financial circumstances, and may revoke
121 any prior order providing legal representation. In that event,
122 any attorney previously appointed shall be entitled to
123 compensation under the provisions of law applicable to the
124 appointment for services already rendered.

125 (g) In the circumstances and manner set forth below,
126 circuit judges may order repayment to the state, through the
127 office of the clerk of the circuit court having jurisdiction
128 over the proceedings, of the costs of representation provided
129 under this article:

130 (1) In every case in which services are provided to an
131 indigent person and an adverse judgment has been rendered
132 against such person, the court may require that person, and

133 in juvenile cases, may require the juvenile's parents or
134 custodian, to pay as costs the compensation of appointed
135 counsel, the expenses of the defense, and any other fees and
136 costs authorized by statute;

137 (2) The court shall not order a person to pay costs unless
138 the person is able to pay without undue hardship. In
139 determining the amount and method of repayment of costs,
140 the court shall take account of the financial resources of the
141 person, the person's ability to pay, and the nature of the
142 burden that payment of costs will impose. The fact that the
143 court initially determines, at the time of a case's conclusion,
144 that it is not proper to order the repayment of costs does not
145 preclude the court from subsequently ordering repayment if
146 the person's financial circumstances change;

147 (3) When a person is ordered to repay costs, the court
148 may order payment to be made immediately or within a
149 specified period of time or in specified installments. If a
150 person is sentenced to a term of imprisonment, an order for
151 repayment of costs is not enforceable during the period of
152 imprisonment unless the court expressly finds, at the time
153 of sentencing, that the person has sufficient assets to pay the
154 amounts ordered to be paid or finds there is a reasonable
155 likelihood the person will acquire the necessary assets in the
156 foreseeable future;

157 (4) A person who has been ordered to repay costs, and
158 who is not in contumacious default in the payment thereof,
159 may at any time petition the sentencing court for
160 modification of the repayment order. If it appears to the
161 satisfaction of the court that continued payment of the
162 amount ordered will impose undue hardship on the person
163 or the person's dependents, the court may modify the
164 method or amount of payment;

165 (5) When a person ordered to pay costs is also placed on
166 probation or imposition or execution of sentence is
167 suspended, the court may make the repayment of costs a
168 condition of probation or suspension of sentence.

169 (h) Circuit clerks shall keep a record of repaid counsel
170 fees and defense expenses collected pursuant to this section
171 and shall, quarterly, pay the moneys to the State Auditor
172 who shall deposit the funds in the General Revenue Fund of
173 the state.

174 (i) The making of an affidavit subject to inquiry under
175 this section does not in any event give rise to criminal
176 remedies against the affiant nor occasion any civil action
177 against the affiant except for the recovery of costs as in any
178 other case where costs may be recovered and the recovery
179 of the value of services, if any, provided pursuant to this
180 article. A person who has made an affidavit knowing the
181 contents of the affidavit to be false may be prosecuted for
182 false swearing as provided by law.

CHAPTER 117

(S. B. 461 - By Senator Blair)

[Passed March 8, 2019; in effect from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §11-21-77 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-22-15a of said code, all relating generally to lottery prizes; defining terms; extending personal income tax withholding requirements to certain lottery winnings; designating lottery winnings as source income; specifying gross prize threshold for lottery winner anonymity election; specifying exemption from Freedom of Information Act; specifying treatment of lottery pool members; eliminating fee for anonymity option election; specifying limitations and exceptions to anonymity pursuant to lawful legal process, disclosure to local, state, or federal tax agencies, and agencies lawfully entitled to information; authorizing promulgation of rules; specifying

method for determining value of gross prize; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-77. Extension of withholding to certain lottery winnings; lottery winnings source income.

1 (a) *Lottery winnings subject to withholding.* — Gross
2 prizes, as defined in §29-22-15a of this code, of more than
3 \$5,000 from any lottery prize awarded by the West Virginia
4 State Lottery Commission are subject to withholding under
5 §11-21-1 *et seq.* of this code. The West Virginia State
6 Lottery Commission in making any lump sum payment,
7 annuity payment or installment payment of a lottery prize
8 subject to withholding shall deduct and withhold from the
9 payment a tax in an amount equal to six and one-half percent
10 of the payment.

11 (b) *Statement by recipient.* — Every person who is to
12 receive payment of a lottery prize subject to withholding
13 shall furnish to the person making the payment, a statement
14 made under the penalties of perjury, containing the name,
15 address, and taxpayer identification number of the person
16 receiving the payment and each person entitled to any
17 portion of the payment.

18 (c) *Coordination with other sections.* — For the
19 purposes of determining liability for payment of taxes and
20 filing of returns, payments of a lottery prize subject to
21 withholding shall be treated as if they were wages paid by
22 an employer to an employee, but shall not be treated as
23 compensation for personal services performed within this
24 state for purposes of §11-21-40 and §11-21-41 of this code.

25 (d) *Source Income.* — (1) All lottery prizes awarded
26 by the West Virginia State Lottery Commission shall be

27 taxed as West Virginia source income and shall be subject
28 to all state and federal income tax laws and rules and
29 regulations. Pursuant to this section, state income taxes
30 shall be withheld from prizes paid whenever federal
31 income taxes are required to be withheld under the
32 Internal Revenue Code.

33 (2) All prizes awarded by the West Virginia State
34 Lottery Commission shall be taxed as West Virginia source
35 income and taxable to nonresidents in accordance with §11-
36 21-32 and §11-21-44 of this code and shall be subject to
37 withholding in accordance with this section.

38 (3) The sourcing provisions of this section shall apply
39 to all prizes awarded by the West Virginia State Lottery
40 Commission, without regard to the form of payment or the
41 period of time over which payments are made. Lump sum
42 payments, installment payments, annuity payments, and
43 winnings payments that are sold, assigned, transferred, or
44 otherwise split, shared, or conveyed to or among parties
45 other than the original prize winner retain their identity as
46 prizes awarded by the West Virginia State Lottery
47 Commission, and retain their character as West Virginia
48 source income.

49 (e) *Backup withholding.* — Beginning July 1, 2012,
50 every person who is required to file Internal Revenue
51 Service Form W-2G, and who is subject to backup
52 withholding under federal law, is subject to West Virginia
53 backup withholding. The payor in making any payment of a
54 gambling prize subject to backup withholding shall deduct
55 and withhold from the payment a tax in an amount equal to
56 six and one half percent of the payment.

57 (f) The changes made to this section during the 2019
58 regular session of the Legislature shall take effect
59 immediately upon the effective date of this section.

**CHAPTER 29. MISCELLANENOUS BOARDS
AND OFFICERS.**

ARTICLE 22. STATE LOTTERY ACT.

**§29-22-15a. Option for winners of draw games to remain
anonymous.**

1 (a) A person entitled to collect a gross prize equal to or
2 exceeding \$1 million from a winning West Virginia State
3 Lottery draw game ticket may remain anonymous:
4 *Provided*, That such anonymity only applies to disclosure
5 by the West Virginia State Lottery, and its employees and
6 officers, of the name, personal contact information, and
7 likeness of the person so entitled: *Provided, however*, That
8 this provision shall not be construed to prevent or impede
9 the lawful disclosure of such information in any court of
10 record or administrative forum pursuant to lawful legal
11 process or disclosure of such information to any taxing
12 agency of any local, state, or federal government or any
13 local, state, or federal agency lawfully entitled to such
14 information, including agencies of another state and lottery
15 agencies of states participating in a multistate or
16 multijurisdictional lottery: *Provided further*, That the name,
17 personal contact information, and likeness of the person so
18 entitled shall not be subject to disclosure under the Freedom
19 of Information Act set forth in §29B-1-1 *et seq.* of this code.

20 (b) If the person entitled to collect a gross prize equal to
21 or exceeding \$1 million from a winning draw game ticket
22 desires to remain anonymous, he or she shall contact the
23 State Lottery Director in writing or appear at the state lottery
24 headquarters in person, concerning his or her desire to
25 remain anonymous: *Provided*, That such a request only
26 permits the person's name, personal contact information,
27 and likeness to remain anonymous. The State Lottery
28 Director may provide by legislative, procedural, or
29 interpretive rule such administrative and timeliness
30 requirements for submission of a request for anonymity as

31 may be necessary or convenient, promulgation of which is
32 hereby authorized.

33 (1) At the time of his or her request to remain
34 anonymous, the person shall provide his or her contact
35 information, including any personal telephone number,
36 residential address, electronic mail address, and a properly
37 executed Internal Revenue Service Form W-2G.

38 (2) When a group forms a lottery pool to purchase
39 lottery tickets and the lottery pool wins the prize, only those
40 members of the lottery pool that each, individually, win a
41 gross prize equal to or exceeding \$1 million, or who, as a
42 result of their lottery pool membership, are entitled to a
43 share of a gross prize equal to or exceeding \$1 million or
44 more, may elect to remain anonymous.

45 (c) Any request to remain anonymous may be made in
46 writing, by certified mail addressed to the West Virginia
47 State Lottery Director, P.O. Box 2067, Charleston, West
48 Virginia 25327, by electronic mail to an email address that
49 is to be established by the West Virginia State Lottery prior
50 to the effective date of this section, or in person at the state
51 lottery headquarters. Once established, the secure email
52 address shall be posted on the West Virginia Lottery's
53 website prior to the effective date of this section: *Provided,*
54 That notwithstanding other provisions of this subsection,
55 the West Virginia State Lottery Director may prescribe by
56 emergency, legislative, procedural, or interpretive rule such
57 transmittal, documentation, timing, and administrative
58 requirements as may be necessary or convenient for
59 submission and processing of requests for anonymity, and
60 such rule requirements and conditions may differ from, and
61 shall supersede, those set forth in this subsection.

62 (d) Upon receiving a request to remain anonymous, the
63 director shall contact the person requesting anonymity and
64 schedule an appointment to meet at any county, regional, or
65 state lottery office to confirm the winning number and to

66 otherwise make arrangements to protect the anonymity of
67 the requesting person.

68 (e) The requirements of this section enacted in 2018 are
69 effective on January 1, 2019. The amendments to this
70 section enacted in 2019 shall take effect upon passage and
71 apply to prizes awarded on and after that date.

72 (f) *Definitions.* — For purposes of this section:

73 (1) *Annuity.* — The term “annuity” means periodic
74 payments of a lottery prize which are payable over a period
75 greater than one year and which are treated under Section
76 72 of the Internal Revenue Code, as defined in §11-21-9 of
77 this code, as amounts received as an annuity, whether or not
78 the periodic payments are variable in amount.

79 (2) *Gross prize.* — The term “gross prize” means the
80 value, whether in money or other property, proceeding from
81 and resulting from a lottery win, without any deduction for
82 gaming losses, the cost of ticket purchases, the amount paid
83 to obtain a chance to win, the amount paid for eligibility to
84 play, or eligibility for selection as a prize recipient or any
85 expenses or reductions of any kind. Gross prize includes
86 amounts received whether paid in cash, cash equivalents, or
87 property, or any noncash form, including real property,
88 personal property, and services. Real property, personal
89 property, and services must be valued at fair market value
90 for purposes of this section. Gross prize includes amounts
91 paid in a lump sum or structured as an annuity paid over
92 time or as installment payments.

93 (A) A gross prize paid or payable as an annuity or a
94 stream of installment payments shall be valued as the total
95 aggregate amount of annuity payments or installment
96 payments to be received over the life of the annuity or
97 stream of installment payments, without discount for
98 present value or the time value of money or payments.

99 (B) In the case of annuities or a stream of installment
100 payments payable for a fixed period of time, the annuity or
101 a stream of installment payments shall, for the limited
102 purpose of determining the \$1 million threshold amount
103 specified in subsection (a) of this section, be valued over
104 such fixed period.

105 (C) In the case of annuities or a stream of installment
106 payments payable for life or for an indefinite period of time
107 of 30 years or more, the annuity or stream of installment
108 payments shall, for the limited purpose of determining the
109 \$1 million threshold amount specified in §29-22-15a(a) of
110 this code, be valued as if it were paid over a fixed period of
111 30 years.

112 (D) In the case of annuities or a stream of installment
113 payments payable for an indefinite but limited period of
114 time of less than 30 years, the annuity or stream of
115 installment payments shall, for the limited purpose of
116 determining the \$1 million threshold amount specified in
117 §29-22-15a(a) of this code, be valued as if it were paid over
118 a fixed period equal to the maximum period of years, or
119 period of time over which it may be paid.

120 (E) In the case of an annuity or a stream of installment
121 payments, payments of which are to be adjusted by an
122 inflation factor or other factor over time, the annuity or
123 stream of installment payments shall, for the limited
124 purpose of determining the \$1 million threshold amount
125 specified in §29-22-15a(a) of this code, be valued at the
126 aggregate amount of payments to be received over the life
127 of the annuity or stream of installment payments as if all
128 payments are equal to the first payment, without adjustment
129 for inflation or other factors.

130 (3) *Lottery pool.* — The term “lottery pool” means a
131 group of lottery players who pool their money to buy lottery
132 tickets, and who purchase tickets for a single drawing.

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CHAPTER 118

(Com. Sub. for S. B. 481 - By Senator Trump)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §3-10-3a of the Code of West Virginia, 1931, as amended, relating to the Judicial Vacancy Advisory Commission; altering the residency requirements for members of the commission; providing that no more than two of the commission's appointed members may be residents of the same state senatorial district; providing that if the number of congressional districts in the state is reduced to two, no more than four of the commission's appointed members may be residents of the same congressional district; providing that members appointed to, and serving on, the commission prior to the effective date of the new residency requirements will not be disqualified from serving for the remainder of their terms; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FILLING VACANCIES.

§3-10-3a. Judicial Vacancy Advisory Commission.

1 (a) The Judicial Vacancy Advisory Commission shall
2 assist the Governor in filling judicial vacancies. The
3 commission shall meet and submit a list of no more than
4 five nor less than two of the most qualified persons to the
5 Governor within 90 days of the occurrence of a vacancy, or
6 the formal announcement of the justice or judge by letter to
7 the Governor of an upcoming resignation or retirement that
8 will result in the occurrence of a vacancy, in the office of
9 Justice of the Supreme Court of Appeals, judge of a circuit

10 court, or judge of a family court. The Governor shall make
11 the appointment to fill the vacancy, as required by this
12 article, within 30 days following the receipt of the list of
13 qualified candidates or within 30 days following the
14 vacancy, whichever occurs later.

15 (b) The commission shall consist of eight appointed
16 members appointed by the Governor for six-year terms,
17 including four public members and four attorney members.
18 The Governor shall appoint attorney members from a list of
19 nominees provided by the Board of Governors of the West
20 Virginia State Bar. The Board of Governors of the West
21 Virginia State Bar shall nominate no more than 20 nor less
22 than 10 of the most qualified attorneys for appointment to
23 the commission whenever there is a vacancy in the
24 membership of the commission reserved for attorney
25 members. The commission shall choose one of its appointed
26 members to serve as chair for a three-year term. No more
27 than four appointed members of the commission shall
28 belong to the same political party. All members of the
29 commission shall be citizens of this state. Public members
30 of the commission may not be licensed to practice law in
31 West Virginia or any other jurisdiction.

32 (c) (1) No more than two appointed members of the
33 commission may be residents of the same state senatorial
34 district, as provided in §1-2-1 of this code, at the time of
35 appointment: *Provided*, That the members appointed to, and
36 serving on, the commission prior to the enactment of this
37 subdivision are not disqualified from service for the
38 remainder of the member's term based on the residency
39 requirements of this subdivision.

40 (2) No more than three appointed members of the
41 commission may be residents of the same congressional
42 district: *Provided*, That, if the number of congressional
43 districts in the state is reduced to two, then no more than
44 four appointed members of the commission may be
45 residents of the same congressional district: *Provided*,
46 *however*, That the members appointed to, and serving on,

47 the commission prior to the date on which the number of
48 congressional districts in the state is reduced to two are not
49 disqualified from service for the remainder of the member's
50 term based on the residency requirements of this
51 subdivision.

52 (d) The Governor, or his or her designee, the President
53 of the West Virginia State Bar, and the Dean of the West
54 Virginia University College of Law shall serve as ex officio
55 members of the commission.

56 (e) Members of the commission shall serve without
57 compensation, except that commission members are entitled
58 to reimbursement of travel and other necessary expenses
59 actually incurred while engaged in official commission
60 activities in accordance with the guidelines of the Travel
61 Management Office of the Department of Administration,
62 or its successor entity. The Governor's Office shall
63 cooperate with the commission to ensure that all resources
64 necessary to carrying out the official duties of the
65 commission are *Provided*, including staff assistance,
66 equipment, and materials.

67 (f) The commission shall adopt written policies that
68 formalize and standardize all operating procedures and
69 ethical practices of its members including, but not limited
70 to, procedures for training commission members,
71 publishing notice of judicial vacancies, recruiting qualified
72 individuals for consideration by the commission, receiving
73 applications from qualified individuals, notifying the public
74 of judicial vacancies, notifying state or local groups and
75 organizations of judicial vacancies, and soliciting public
76 comment on judicial vacancies. The written policies of the
77 commission are not subject to the provisions of chapter 29A
78 of this code but shall be filed with the Secretary of State.

79 (g) A majority of the commission plus one shall
80 constitute a quorum to do business.

81 (h) All organizational meetings of the commission shall
82 be open to the public and subject to the requirements of
83 §6-9A-1 *et seq.* of this code. An “organizational meeting”
84 means an initial meeting to discuss the commission’s
85 procedures and requirements for a judicial vacancy. The
86 commission shall hold at least one organizational meeting
87 upon the occurrence of a judicial vacancy. All other
88 meetings of the commission are exempt from §6-9A-1 *et*
89 *seq.* of this code.

90 (i) The commission shall make available to the public
91 copies of any applications and any letters of
92 recommendation written on behalf of any applicants. All
93 other documents or materials created or received by the
94 commission shall be confidential and exempt from the
95 provisions of chapter 29B of this code, except for the list of
96 the most qualified persons or accompanying memoranda
97 submitted to the Governor in accordance with the provisions
98 of subsection (j) of this section, which shall be available for
99 public inspection, and the written policies required to be
100 filed with the Secretary of State in accordance with
101 subsection (f) of this section.

102 (j) The commission shall submit its list of the most
103 qualified persons to the Governor in alphabetical order. A
104 memorandum may accompany the list of the most qualified
105 persons and state facts concerning each of the persons listed.
106 The commission shall make copies of any list of the most
107 qualified persons and accompanying memoranda it submits
108 to the Governor available for public inspection.

●

CHAPTER 119

(S. B. 566 - By Senator Boso)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §29-5A-1 of the Code of West Virginia, 1931, as amended, relating to compensation for members of the State Athletic Commission for attendance and participation at public meetings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5A. STATE ATHLETIC COMMISSION.

§29-5A-1. Creation of commission; members; officers; seal and rules.

1 (a) The State Boxing Commission, heretofore created,
2 is hereby continued and renamed the State Athletic
3 Commission. The commission shall consist of five persons
4 appointed by the Governor, by and with the consent of the
5 Senate, no more than three of whom shall belong to the same
6 political party and no two of whom shall be residents of the
7 same county at the same time. One member shall have at
8 least three years of experience in the sport of boxing. One
9 member shall have at least three years of experience in the
10 sport of mixed martial arts. One member shall have at least
11 three years of experience in the health care industry as a
12 licensed physician, registered nurse, nurse practitioner, or
13 physicians' assistant. Two members shall be citizen
14 members who are not licensed under the provisions of this
15 article and who do not perform any services related to the
16 persons regulated under this article. The members shall
17 serve without pay except that each member shall receive

18 \$100 for each day that he or she attends and participates in
19 a public meeting in which the commission makes or
20 deliberates towards an official act: *Provided*, That the total
21 compensation a member may receive during each fiscal year
22 may not exceed \$1,500.

23 (b) At the expiration of the term of each member, his or
24 her successor shall be appointed by the Governor for a term
25 of four years. If there is a vacancy in the board, the vacancy
26 shall likewise be filled by appointment by the Governor and
27 the Governor shall likewise have the power to remove any
28 commissioner at his or her pleasure.

29 (c) Any three members of the commission shall
30 constitute a quorum for the exercise of the power or
31 authority conferred upon it. The members of the
32 commission shall, at the first meeting after their
33 appointment, elect one of their number chairman of the
34 commission and another of their number secretary of the
35 commission, shall adopt a seal for the commission, and shall
36 make such rules for the administration of their office, not
37 inconsistent herewith, as they may consider expedient; and
38 they may hereafter amend or abrogate such rules.

39 (d) The concurrence of at least three commissioners is
40 necessary to render a choice or decision of the commission
41 except that, notwithstanding the requirements of the Open
42 Governmental Proceedings Act, §6-9A-1 *et seq.* of this
43 code, a quorum of the commission may vote in writing to
44 approve changes to the roster of participants or the roster of
45 officials if the need for the substitution(s) is made known to
46 the commission within 48 hours of an event that the
47 commission previously approved: *Provided*, That the
48 substitution(s) is necessary to effectuate the match:
49 *Provided, however*, That the written decision of the
50 commission is presented at the next scheduled meeting of
51 the commission and recorded in its minutes.

●

CHAPTER 120

(S. B. 625 - By Senator Boso)

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

AN ACT to amend and reenact §29-5A-3, §29-5A-3a, §29-5A-8, §29-5A-14, §29-5A-20, and §29-5A-24 of the Code of West Virginia, 1931, as amended, all relating to the State Athletic Commission's direction, management, and control over all boxing and mixed martial arts events, contests, and matches in West Virginia; authorizing the commission to promulgate legislative rules regulating said boxing and mixed martial arts events; authorizing the commission to issue, suspend, or revoke the licenses required to promote, contend in, judge, referee, or otherwise participate in said boxing and mixed martial arts events; establishing the requirements for licensure as a promoter, contestant, manager, trainer, judge, matchmaker, or official; establishing restrictions and prohibitions against conflicts of interest; and establishing appropriate rules for regulating and sanctioning amateur boxing events.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5A. STATE ATHLETIC COMMISSION.

§29-5A-3. Commission to have sole control of boxing, etc., matches; licenses; municipality not to tax boxing, etc., club.

1 (a) The commission has sole direction, management,
2 and control of the jurisdiction over all amateur,
3 professional, and semiprofessional boxing, sparring
4 matches, and exhibitions, or any form thereof, to be

5 conducted, held or given within the state by any club,
6 individual, corporation, or association. As used in this
7 article, the term “boxing” includes any fighting event that
8 includes or permits the striking of an opponent with a closed
9 fist, even if wrestling moves, elements of martial arts, or
10 striking an opponent with the feet are also permitted. No
11 boxing, sparring, or exhibition may be conducted, held, or
12 given within the state except pursuant to the commission’s
13 authority and held in accordance with this article. The
14 commission may issue and revoke the license to conduct,
15 hold, or give boxing or sparring matches or exhibitions to
16 any club, corporation, association, or individual. Every
17 license is subject to rules the commission may prescribe.
18 Every application for a license shall be on a blank form
19 provided by the commission. Upon application of the
20 promoter’s license, the promoter shall pay a state license fee
21 of \$125 for one year. The fee is nonrefundable and shall be
22 paid in the form of a certified check or money order issued
23 to the Treasurer of the State of West Virginia to be deposited
24 in the fund set forth in §29-5A-3b of this code. Nonprofit
25 chartered and charitable organizations are exempt from this
26 license fee for all amateur events. No municipal corporation
27 may impose any license tax on boxing, sparring, or
28 exhibition clubs, notwithstanding the provisions of any
29 section of the code respecting municipal taxes and licenses.
30 The granting of a license to a club by the commission, or the
31 holding of a license by a club, individual, corporation, or
32 association, does not prevent the commission from
33 canceling or revoking the license to conduct an event as
34 provided in this section.

35 (b) In exercising its jurisdiction over professional and
36 semiprofessional boxing, sparring matches, and exhibitions,
37 the commission shall follow the current unified rules of
38 boxing adopted by the Association of Boxing Commissions
39 and requirements to enable the proper sanctioning of all
40 participants, referees, judges, and matches or exhibitions
41 and shall cooperate fully with the Association of Boxing
42 Commissions in order that the sanctioning be extended to

43 state boxers. The commission shall supervise all amateur
44 boxing conducted in this state and any such contest shall
45 follow the amateur rules for boxing as recommended and
46 adopted by the Association of Boxing Commissions, U.S.A.
47 Boxing, the International Boxing Association, or any other
48 appropriate governing or sanctioning body recognized and
49 accepted by the commission. For full contact boxing events
50 and other boxing events that follow nontraditional rules, the
51 commission may impose any limitations or restrictions
52 reasonably necessary to guarantee the safety of the
53 participants and the fair and honest conducting of the
54 matches or exhibitions and may refuse to license any event
55 that poses an unreasonable degree of risk to the participants.

56 (c) In exercising jurisdiction over professional,
57 semiprofessional, and amateur boxing as well as any other
58 boxing event over which the commission has jurisdiction
59 under §29-5A-3(b) of this code, the commission may
60 propose rules for legislative approval, in accordance with
61 the provisions of §29A-3-1 *et seq.* of this code, to implement
62 the provision of this section including:

63 (1) Procedures and requirements for the issuance and
64 renewal of licenses;

65 (2) Exemptions from licensure;

66 (3) Procedures for fining, suspending, or revoking the
67 license of any holder of a license issued under this article;

68 (4) A schedule of licensing fees;

69 (5) Limitations or restrictions necessary to guarantee the
70 safety of the participants;

71 (6) Requirements for fair and honest conducting of
72 contests, matches, or exhibitions; and

73 (7) Any other rules necessary to effectuate the
74 provisions of this article.

§29-5A-3a. Power to regulate mixed martial arts.

1 (a) The commission has sole power, direction,
2 management, and control over all professional and amateur
3 mixed martial arts contests, matches, and exhibitions, or any
4 form thereof, to be promoted, conducted, held, or given
5 within the state.

6 (b) As used in this article, the term “mixed martial arts”
7 means a combative sporting contest, the rules of which
8 allow two competitors to attempt to achieve dominance over
9 one another by utilizing a variety of techniques including,
10 but not limited to, striking, grappling, and the application of
11 submission holds.

12 (c) A mixed martial arts contest, match, or exhibition
13 promoted, conducted, held, or given within the state shall be
14 under the commission’s authority and be in accordance with
15 the provision of this section. The provisions of this article
16 that apply to boxing shall also apply to mixed martial arts as
17 appropriate.

18 (d) In exercising its jurisdiction over professional and
19 amateur mixed martial arts contests, matches, and
20 exhibitions, the commission shall follow the current unified
21 rules of mixed martial arts as adopted by the Association of
22 Boxing Commissions to enable the proper equipment,
23 fighting area and weight classes to ensure the safety of
24 contestants and ensure the licensing of all participants,
25 referees, and judges, and the approval of contests, matches,
26 or exhibitions conducted under the provisions of this
27 section.

28 (e) The commission may issue and revoke a license to
29 promote, conduct, hold, or give mixed martial arts contests,
30 matches, or exhibitions and may issue and revoke a license
31 to be a contestant. Each license is subject to the provisions
32 of this section and this article and the rules of the
33 commission.

34 (f) The commission shall propose rules for legislative
35 approval, in accordance with the provisions of §29A-3-1 *et*
36 *seq.* of this code to implement the provisions of this section,
37 including:

38 (1) Procedures and requirements for the issuance and
39 renewal of licenses: *Provided*, That the procedures and
40 requirements may not:

41 (A) Limit or prohibit mixed martial arts contests,
42 matches or exhibitions; nor

43 (B) Include a provision that a licensee be a West
44 Virginia resident;

45 (2) Exemptions from licensure;

46 (3) Procedures for fining, suspending, or revoking the
47 license of any holder of a license issued under this article;

48 (4) Adopting the unified rules of mixed martial arts;

49 (5) A schedule of licensing fees;

50 (6) Limitations or restrictions necessary to guarantee the
51 safety of the participants;

52 (7) The requirements for fair and honest conducting of
53 the contests, matches or exhibitions; and

54 (8) Any other rules necessary to effectuate the
55 provisions of this section.

56 (g) Notwithstanding the provisions of this code to the
57 contrary, a municipality may not impose a municipal license
58 tax under §8-13-4 of this code on mixed martial arts clubs.
59 The granting of a license to a club by the commission, or the
60 holding of a license by a club, individual, corporation, or
61 association, does not prevent the commission from revoking
62 the license to conduct an event as provided in this section:
63 *Provided*, That nothing in this subsection limits the
64 authority of a municipality to impose any other taxes or fees

65 on mixed martial arts contests, matches, or exhibitions
66 pursuant to §8-13-1 *et seq.* of this code.

**§29-5A-8. Issuance of license; qualification for licenses;
application of other provisions of chapter; hearings.**

1 (a) The commission may issue a license to promote,
2 conduct, or hold professional, semiprofessional or amateur
3 boxing, or professional or amateur mixed martial arts
4 sparring matches and exhibitions to any person, corporation,
5 association, club, or organization eligible for a license under
6 this article. In the case of a corporate applicant, the
7 requirements for licensure shall pertain to its officers,
8 directors, principal stockholders, and employees.

9 Before being granted a license or the renewal of a
10 license under this subsection, the applicant shall establish to
11 the satisfaction of the commission that he or she:

12 (A) Possesses the requisite skill, knowledge, and ability
13 to promote, hold, and conduct a boxing or mixed martial arts
14 contest, exhibition, or match;

15 (B) Is of good moral character;

16 (C) Has executed and filed a surety bond with the
17 commission as required in §29-5A-15 of this code;

18 (D) Will conduct his or her business in a manner that
19 furthers the public welfare, preserves the safety and health
20 of participants, and advances the reputation and interests of
21 the sports of boxing and mixed martial arts;

22 (E) Will adhere to and comply with all the rules of the
23 commission pertaining to the license.

24 (b) The commission may issue a license to engage as a
25 combatant in a boxing or mixed martial arts contest,
26 exhibition, or match to any person eligible for a license
27 under this article.

28 Before being granted a license or a renewal of a license
29 issued under this subsection, the applicant shall establish to
30 the satisfaction of the commission that he or she:

31 (A) Possesses the requisite fitness, skill, knowledge, and
32 ability to compete as a professional, semiprofessional or
33 amateur boxer, or a professional or amateur mixed martial
34 artist;

35 (B) Is of good moral character;

36 (C) Will act in a manner that furthers the public welfare
37 and advances the reputation and interests of the sports of
38 boxing and mixed martial arts;

39 (D) Will adhere to and comply with all the rules and
40 regulations of the commission pertaining to the license.

41 (c)(1) The commission may issue any other license
42 required under this article including any license of a referee,
43 judge, other official, manager, matchmaker, or trainer. In
44 the case of a corporate applicant, the requirements for
45 licensure shall pertain to its officers, directors, principal
46 stockholders, and employees.

47 (2) Before being granted a license or the renewal of a
48 license under this subsection, the applicant shall establish to
49 the satisfaction of the commission that he or she:

50 (A) Possesses the requisite skill, knowledge, and ability
51 in boxing and mixed martial arts;

52 (B) Is of good moral character;

53 (C) Will adhere to and comply with all the rules and
54 regulations of the commission pertaining to the license;

55 (D) Will act in a manner that furthers the public welfare,
56 preserves the safety and health of participants, and advances
57 the reputation and interests of the sports of boxing and
58 mixed martial arts.

59 (d) Every license and licensee is subject to such rules,
60 and amendments thereof, as the commission may prescribe.

§29-5A-14. Suspension, revocation, etc., of license.

1 The commission shall have the additional authority and
2 power to suspend, revoke, or place on probation the license
3 of any licensee licensed under this chapter, who in the
4 discretion of the commission:

5 (a) Fails to obey any lawful order of the commission,
6 the secretary, or any inspector thereof;

7 (b) Is guilty of gross immorality;

8 (c) Lacks the requisite fitness, skill, knowledge, or
9 ability to safely, properly, and competently promote, hold,
10 conduct, engage, act, manage, contend in, judge, referee,
11 officiate, or otherwise participate in a boxing or mixed
12 martial arts contest;

13 (d) Violates any provision of this article or the rules of
14 the commission;

15 (e) Secures any benefit, payment, reimbursement,
16 agreement, contract, license, or title for himself, herself, or
17 another related to a boxing or mixed martial arts contest,
18 exhibition, or match through fraud, deceit, or material
19 misrepresentation;

20 (f) Has a direct or indirect financial interest in the
21 outcome or result of any boxing or mixed martial arts
22 contest, exhibition, or event that he or she promotes, holds,
23 or conducts;

24 (g) Has a direct or indirect financial interest in the
25 outcome or result of any boxing or mixed martial arts
26 contest, exhibition, or event in which he or she acts as a
27 judge, referee, deputy, inspector, timekeeper, scorekeeper,
28 or other official;

29 (h) Contracts, agrees, acts, engages, or attempts to
30 promote, manage, train, or match any boxer or mixed
31 martial artist without disclosing, through a written
32 instrument, any direct or indirect financial interest in
33 conflict with the boxer's or mixed martial artist's health,
34 safety, competitive, or financial interests;

35 (i) Is licensed as a promoter and has a direct or indirect
36 financial interest in the management of any boxer or mixed
37 martial artist licensed by the commission;

38 (j) Is licensed as a manager and has a direct or indirect
39 financial interest in the promotion of any boxing or mixed
40 martial arts contest, exhibition, or match sanctioned by the
41 commission: *Provided*, That a manager may receive any
42 compensation expressly agreed to and disclosed in a written
43 contract between the boxer and manager: *Provided*,
44 *however*, That nothing in this section shall prohibit a boxer
45 or mixed martial artist from acting as his own promoter or
46 manager;

47 (k) Violates any provision of the Muhammad Ali
48 Boxing Reform Act of 2000, 15 U.S.C. §6301 *et seq.*;

49 (l) Has been convicted of a felony or misdemeanor
50 involving moral turpitude in any jurisdiction within one
51 year preceding the suspension or revocation and such
52 conviction not previously reported to the commission by
53 said licensee;

54 (m) Is an habitual drunkard or addicted to the use of
55 narcotics;

56 (n) Is or has become mentally incompetent;

57 (o) Is or has been guilty of unprofessional or unethical
58 conduct, or such conduct as to require a suspension or
59 revocation of license in the interest of the public;

60 (p) Has failed to furnish the proper party a copy of any
61 contract or statement required by this chapter or the rules

62 and regulations promulgated hereunder, or has breached
63 such a contract;

64 (q) Has loaned or permitted another person to use his or
65 her license, or has borrowed or used the license of another;

66 (r) Has failed to maintain in force the bond required by
67 this chapter;

68 (s) Has by act or omission conducted himself or herself
69 in a manner which would tend to be detrimental to the best
70 interests of boxing generally, or to the public interest and
71 general welfare;

72 (t) Has been disciplined in any manner by the boxing
73 commission or similar agency or body of any jurisdiction;

74 (u) Has failed to pay a fine or forfeiture imposed by this
75 chapter;

76 (v) Has, either within or without this state, by any act,
77 threat, statement, or otherwise, restrained, hindered, interfered
78 with, or prevented another promoter, club, association, or
79 booking agent, or has attempted, either within or without this
80 state, in any such manner to restrain, hinder, interfere with, or
81 prevent another promoter, club, association, or booking agent
82 from presenting any boxing match or exhibition within or
83 without the State of West Virginia;

84 (w) Has, either within or without this state, engaged,
85 directly or indirectly, in restraints or monopolies or taken
86 any action tending to create or establish restraints or
87 monopolies or conspired with others to restrain any person
88 or persons from participating or competing in any boxing
89 match or exhibition for any promoter, club, association or
90 booking agent.

§29-5A-20. Licenses for contestants, referees, and managers.

1 No contestant, trainer, inspector, referee, other official,
2 matchmaker, or professional manager may take part in any

3 boxing or mixed martial arts contest or exhibition unless
4 holding a license from the state that is issued by the
5 commission upon payment of the following annual license
6 fee schedule: Professional contestant \$25; amateur
7 contestant \$20; trainer \$20; inspector \$30; referee or other
8 official, \$30; matchmaker \$50; and professional manager
9 \$50. Semiprofessional contestants shall pay a license fee of
10 \$10 for each event. Such fees shall accompany the
11 application and shall be in the form of a certified check or
12 money order and shall be issued to the Treasurer of the State
13 of West Virginia to be deposited in the State Athletic
14 Commission Fund. If a license is not granted, the Treasurer
15 shall refund the full amount.

§29-5A-24. Rules governing contestants and matches.

1 (a) The commission shall propose rules for legislative
2 approval in accordance with the provisions of §29A-3-1 *et*
3 *seq.* of this code.

4 (b) The commission shall propose such rules to regulate
5 professional and semiprofessional boxers, professional or
6 amateur mixed martial artists, professional and
7 semiprofessional boxing matches and exhibitions and
8 professional or amateur mixed martial arts matches and
9 exhibitions: *Provided*, That for professional boxers and
10 boxing matches and exhibitions, the commission rules shall
11 comply with the current unified rules of boxing as adopted
12 by the Association of Boxing Commissions; for
13 professional mixed martial artists and mixed martial arts
14 matches and exhibitions, the commission rules shall comply
15 with the current unified rules of mixed martial arts as
16 adopted by the Association of Boxing Commissions; for
17 amateur boxers and boxing matches or exhibitions, the
18 commission rules shall comply with the amateur rules for
19 boxing as adopted by the Association of Boxing
20 Commissions, U.S.A. Boxing, the International Boxing
21 Association, or any other appropriate governing or
22 sanctioning body recognized and accepted by the
23 commission; and for amateur mixed martial artists and

24 mixed martial arts matches or exhibitions, the commission
25 rules shall comply with the current unified rules of mixed
26 martial arts as recommended and/or adopted by the
27 Association of Boxing Commissions. For full contact
28 boxing and other boxing events that follow nontraditional
29 rules, rules guaranteeing the safety of the participants and
30 the fair and honest conducting of the matches or exhibitions
31 are authorized.

32 (c) The commission shall propose separate rules for
33 amateur boxers and amateur boxing, sparring matches and
34 exhibitions as follows:

35 Rules which comply with the requirements of the rules
36 recommended or adopted by the Association of Boxing
37 Commissions, U.S.A. Boxing, the International Boxing
38 Association, or any other appropriate governing or
39 sanctioning body recognized and accepted by the
40 commission to the extent that any boxer complying with
41 them will be eligible to participate in any state, nationally,
42 or internationally sanctioned boxing match.



CHAPTER 121

**(Com. Sub. for H. B. 2191 - By Delegates Westfall,
Espinosa and Barrett)**

[Passed February 12, 2019; in effect from passage.]
[Approved by the Governor on February 25, 2019.]

AN ACT to amend and reenact §29-22B-321, §29-22B-503, §29-22B-504, §29-22B-903, and §29-22B-1408 of the Code of West Virginia, 1931, as amended, all relating generally to limited video lottery; modifying the definition of “operator”; allowing operators to be retailers at up to 10 licensed locations with certain exceptions; increasing the maximum wager

permitted per limited video lottery game; removing restrictions on bill denominations accepted by limited video lottery terminals; and fixing the state's share of gross terminal income at 50 percent on July 1, 2019.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22B. LIMITED VIDEO LOTTERY.

PART III.

DEFINITIONS.

§29-22B-321. Operator defined.

1 "Operator" means a person holding an operator's
2 license granted under this article by the commission
3 allowing the person to: (1) Own or lease a specified number
4 of video lottery terminals from one or more manufacturers;
5 (2) service and repair those video lottery terminals; (3) enter
6 into contracts with limited video lottery retailers for
7 placement of those video lottery terminals in a restricted
8 access adult-only facility located on the premises of the
9 limited video lottery retailers; and (4) operate limited video
10 lottery terminals as a limited video lottery retailer, subject
11 to the provisions of §29-22B-503 of this code.

PART V.

REQUIREMENTS AND QUALIFICATIONS FOR LICENSURE.

§29-22B-503. Additional qualifications for an applicant for an operator's license.

1 (a) No operator's license or license renewal may be
2 granted unless the Lottery Commission has determined that,
3 in addition to the general requirements set forth in §29-22B-
4 502 of this code, the applicant satisfies all of the following
5 qualifications:

6 (1)(A) If the applicant is an individual, the applicant has
7 been a citizen of the United States and a resident of this state

8 for the four year period immediately preceding the
9 application; or

10 (B) If the applicant is a corporation, partnership or other
11 business entity, the chief executive officer and the majority
12 of the officers, directors, members, and partners (to the
13 extent each of these groups exists with respect to a particular
14 business organization), both in number and percentage of
15 ownership interest, have been citizens of the United States
16 and residents of this state for the four year period
17 immediately preceding the application.

18 (2) The applicant has demonstrated the training,
19 education, business ability and experience necessary to
20 establish, operate and maintain the business for which the
21 license application is made;

22 (3) The applicant has secured any necessary financing
23 for the business for which the license application is made,
24 and the financing: (A) Is from a source that meets the
25 qualifications of this section, and (B) is adequate to support
26 the successful performance of the duties and responsibilities
27 of the licensee. A licensee shall request commission
28 approval of any change in financing or leasing arrangements
29 at least 30 days before the effective date of the change;

30 (4) The applicant has disclosed all financing or
31 refinancing arrangements for the purchase, lease or other
32 acquisition of video lottery terminals and associated
33 equipment in the degree of detail requested by the Lottery
34 Commission;

35 (5) The applicant has filed with the Lottery Commission
36 a copy of any current or proposed agreement between the
37 applicant and any manufacturer for the sale, lease or other
38 assignment to the operator of video lottery terminals, the
39 electronic computer components of the terminals, the
40 random number generators of the terminals, or the cabinets
41 in which they are housed; and

42 (6) The applicant does not hold any other license under
43 this article, §19-23-1, *et seq.*, §29-22-1, *et seq.*, §29-22A-1,
44 *et seq.*, or §29-25-1, *et seq.* of this code, except that an
45 applicant may also be licensed as a service technician. In
46 addition, an applicant may also be licensed as a limited
47 video lottery retailer: *Provided*, That a licensed operator
48 that also is a licensed retailer may operate limited video
49 lottery terminals as a limited video lottery retailer at no more
50 than 10 locations: *Provided, however*, That the Director
51 may authorize the operator to operate limited video lottery
52 terminals as a limited video lottery retailer at more than 10
53 locations if the applicant provides sufficient justification
54 that such approval is necessary to sustain state revenues
55 without a detrimental impact on public interest, further
56 shows that a qualified retailer is unavailable and a good faith
57 effort to identify a qualified retailer was made prior to the
58 request, and an explanation of other relevant information
59 supporting such request.

60 (b)(1) A person or a member of his or her immediate
61 family who has an ownership interest in a business entity
62 that submits an application for an operator's license may
63 not: (A) Submit an application for another operator's license
64 as an individual, (B) serve as an officer, director, member,
65 or partner of a business entity that submits an application
66 for another operator's license, or (C) have an ownership
67 interest in any other business entity that submits an
68 application for an operator's license.

69 (2) Business entities that have common owners or
70 common officers, directors, members, or partners may not
71 hold more than one operator's license

§29-22B-504. Additional qualifications for an applicant for a limited video lottery retailer's license.

1 No limited video lottery retailer's license or license
2 renewal may be granted unless the Lottery Commission has
3 determined that, in addition to the general requirements set

4 forth in §29-22B-502, the applicant satisfies all of the
5 following qualifications:

6 (1)(A) If the applicant is an individual, the applicant has
7 been a citizen of the United States and a resident of this state
8 for the four year period immediately preceding the
9 application;

10 (B) If the applicant is a corporation, partnership or other
11 business entity, the chief executive officer and the majority
12 of the officers, directors, members, and partners (to the
13 extent each of these groups exists with respect to a particular
14 business organization), both in number and percentage of
15 ownership interest, have been citizens of the United States
16 and residents of this state for the four year period
17 immediately preceding the application;

18 (2) The applicant has disclosed to the Lottery
19 Commission the identity of each person who has control of
20 the applicant, as control is described in §29-22B-507 of this
21 code;

22 (3) The applicant holds either: (A) A valid license issued
23 under §60-7-1 *et seq.* of this code to operate a private club,
24 (B) a valid Class A license issued under §11-16-1 *et seq.* of
25 this code to operate a business where nonintoxicating beer
26 is sold for consumption on the premises, or (C) both
27 licenses;

28 (4) The applicant has demonstrated the training,
29 education, business ability and experience necessary to
30 establish, operate and maintain the business for which the
31 license application is made;

32 (5) The applicant has secured any necessary financing
33 for the business for which the license application is made
34 and the financing: (A) Is from a source that meets the
35 qualifications of this section, and (B) is adequate to support
36 the successful performance of the duties and responsibilities
37 of the licensee;

38 (6) The applicant has disclosed all financing or
39 refinancing arrangements for placement on the applicant's
40 premises of video lottery terminals and associated
41 equipment in the degree of detail requested by the Lottery
42 Commission;

43 (7) The applicant has filed with the Lottery Commission
44 a copy of any current or proposed agreement between the
45 applicant and a licensed operator for the placement on the
46 applicant's premises of video lottery terminals;

47 (8) The applicant has filed with the Lottery Commission
48 a copy of any current or proposed agreement between the
49 applicant and a licensed operator or other person for the
50 servicing and maintenance of video lottery terminals by
51 licensed service technicians; and

52 (9) The applicant does not hold any other license under
53 this article, §19-23-1 *et seq.*, or §29-22A-1 *et seq.*, or §29-
54 25-1 *et seq.* of this code except that an applicant may also
55 be licensed as a service technician. In addition, an applicant
56 may also be licensed as an operator, subject to provisions of
57 §29-22B-503(a)(6) of this code.

PART IX.

VIDEO LOTTERY HARDWARE AND SOFTWARE.

§29-22B-903. Coin or bill acceptors.

1 (a) A minimum of one electronic or mechanical coin
2 acceptor or other means by which to accurately and
3 efficiently establish credits must be installed on each video
4 lottery terminal. Each video lottery terminal may also
5 contain bill acceptors.

6 (b) The Lottery Commission shall approve all coin and
7 bill acceptors prior to use on any video lottery terminal in
8 this state.

9 (c) A video lottery terminal shall not allow more than
10 \$5 to be wagered on a single game.

PART XIV.

NET TERMINAL INCOME AND DISTRIBUTION OF REVENUES.

§29-22B-1408. Distribution of state's share of gross terminal income.

1 (a) The state's share of gross terminal income is
2 calculated as follows:

3 (1) The commission shall deposit two percent of gross
4 terminal income into the State Lottery Fund for the
5 commission's costs and expenses incurred in administering
6 this article. From this amount, not less than \$150,000 nor
7 more than \$1 million per fiscal year, as determined by the
8 commission each year, shall be transferred to the
9 Compulsive Gambling Treatment Fund created in §29-22A-
10 19 of this code. In the event that the percentage allotted
11 under this subsection for the commission's costs and
12 expenses incurred in administering this article generates a
13 surplus, the surplus shall be allowed to accumulate to an
14 amount not to exceed \$250,000. On a monthly basis, the
15 director shall report to the Joint Committee on Government
16 and Finance of the Legislature any surplus in excess of
17 \$250,000 and remit to the State Treasurer the entire amount
18 of those surplus funds in excess of \$250,000 to be deposited
19 in the fund established in §29-22-18a of this code: *Provided,*
20 That at the close of each of the fiscal years ending June 30,
21 2006, 2007, 2008, 2009, 2010 and 2011, the portion of the
22 two percent allowance for administrative expenses provided
23 in this subdivision (1) that remains unspent for costs and
24 expenses incurred in administering this article, not to exceed
25 \$20 million in any fiscal year, shall be transferred to the
26 Revenue Center Construction Fund created by §29-22-18(1)
27 of this code for the purpose of constructing a state office
28 building.

29 (2) Gross profits are determined by deducting the
30 percentage described in subdivision (1) of this subsection,
31 from gross terminal income.

32 (3) The commission shall receive 30 percent of gross
33 profits as defined in subdivision (2) of this subsection
34 except as otherwise provided in this subdivision. On June 1,
35 2002, the commission shall calculate the aggregate average
36 daily gross terminal income for all operating video lottery
37 terminals during the preceding three month period.
38 Thereafter, the commission shall make the calculation on
39 the first day of the month preceding the months of October,
40 January, April, and July of each year. So long as the
41 aggregate average gross terminal income per day for the
42 operating video lottery terminals does not exceed \$60, the
43 commission's share of gross profits shall continue to be 30
44 percent for the succeeding quarter of the year beginning July
45 1. Beginning on July 1, 2002 and the first days of October,
46 January, April, and July in 2002 and thereafter, if the
47 commission's calculation of aggregate average daily gross
48 terminal income per video lottery terminal yields an amount
49 greater than \$60, one of the following schedules apply: If
50 the amount is greater than \$60 per day but not greater than
51 \$80 per day, the commission's share of gross profits for the
52 ensuing quarter beginning the first day of the quarter of the
53 year described in this subdivision shall be 34 percent; if the
54 amount is greater than \$80 per day but not greater than \$100
55 per day, the commission's share of gross profits for the
56 ensuing quarter beginning the first day of the quarter of the
57 year described in this subdivision shall be 38 percent; if the
58 amount is greater than \$100 per day but not greater than
59 \$120 per day, the commission's share of gross profits for
60 the ensuing quarter beginning the first day of the quarter of
61 the year described in this subdivision shall be 42 percent; if
62 the amount is greater than \$120 per day but not greater than
63 \$140 per day, the commission's share of gross profits for
64 the ensuing quarter beginning the first day of the quarter of
65 the year described in this subdivision shall be 46 percent; if
66 the amount is greater than \$140 per day, the commission's

67 share of gross profits for the ensuing quarter beginning the
68 first day of the quarter of the year described in this
69 subdivision shall be 50 percent: *Provided*, That effective
70 July 1, 2019, the commission's share of gross profits shall
71 be 50 percent. This amount shall be known as net terminal
72 income.

73 (b) Net terminal income shall be distributed by the
74 commission as follows:

75 (1)(A) Beginning July 1, 2002, a county and the
76 incorporated municipalities within that county shall receive
77 two percent of the net terminal income generated by limited
78 video lottery terminals located within the county;

79 (B) From this two percent of net terminal income, each
80 municipality shall receive a share that bears the same
81 proportion to the total two percent of net terminal income as
82 the population of the municipality bears to the total
83 population of the county as determined by the most recent
84 decennial United States census of population, and the
85 county shall receive the remaining portion of the two
86 percent of net terminal income; and

87 (2) Any remaining funds shall be deposited into the state
88 excess lottery revenue fund established in §29-22-18a of
89 this code.

90 (c) The licensed operators and limited video lottery
91 retailers shall receive the balance of gross terminal income
92 remaining after deduction of the state's share as calculated
93 pursuant to this section.

●

CHAPTER 122

**(Com. Sub. for H. B. 2204 - By Delegates Foster, Fast,
Phillips, Waxman and Wilson)**

[Passed March 1, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-22, relating to prohibiting state licensing boards from hiring lobbyists; and declaring that the director, board counsel and appointed board members of each board may lobby on behalf of the board.

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.**

§30-1-22. Lobbying.

1 No board may employ or contract with any person
2 whose job functions or obligations include lobbying on
3 behalf of the board: *Provided*, That the director, board
4 counsel and appointed board members may lobby on behalf
5 of the board.

CHAPTER 123

**(Com. Sub. for H. B. 2452 - By Hanshaw (Mr.
Speaker) and Delegate Miley)
[By Request of the Executive]**

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

AN ACT to repeal §5A-6-4a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §5A-6B-1, §5A-6B-2, §5A-6B-3, §5A-6B-4, §5A-6B-5 and §5A-6B-6, all relating to cybersecurity of state government; removing the requirements of the Chief Technology Officer to oversee security of government information; creating the Cybersecurity Office; defining terms; providing that the Chief Information Security Officer to oversee the Cybersecurity Office; authorizing the Chief Information Security Officer to create a cybersecurity framework, to assist and provide guidance to agencies in cyber risk strategy and setting forth other duties; providing rule-making authority; requiring agencies to undergo cyber risk assessments; establishing scope of authority; exempting certain state entities; designating reporting requirements; requiring agencies to address any cybersecurity deficiencies; exempting information related to cyber risk from public disclosure; and requiring annual reports to the Joint Committee on Government and Finance and to the Governor on the status of the cybersecurity program, including any recommended statutory changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-4a. Duties of the Chief Technology Officer relating to security of government information.

1 [Repealed.]

ARTICLE 6B. CYBER SECURITY PROGRAM.

§5A-6B-1. West Virginia Cybersecurity Office; scope; exemptions.

1 (a) There is hereby created the West Virginia
2 Cybersecurity Office within the Office of Technology. The
3 office has the authority to set standards for cybersecurity
4 and is charged with managing the cybersecurity framework.

5 (b) The provisions of this article are applicable to all
6 state agencies, excluding higher education institutions, the
7 State Police, state constitutional officers identified in §6-7-
8 2 of this code, the Legislature and the Judiciary.

§5A-6B-2. Definitions.

1 As used in this article:

2 “Cybersecurity framework” means computer
3 technology security guidance for organizations to assess and
4 improve their ability to prevent, detect, and respond to cyber
5 incidents.

6 “Cyber incident” means any event that threatens the
7 security, confidentiality, integrity, or availability of
8 information assets, information systems, or the networks
9 that deliver the information.

10 “Cyber risk assessment” means the process of
11 identifying, analyzing and evaluating risk and applying the
12 appropriate security controls relevant to the information
13 custodians.

14 “Cyber risk management service” means technologies,
15 practices and policies that address threats and vulnerabilities
16 in networks, computers, programs and data, flowing from or
17 enabled by connection to digital infrastructure, information
18 systems or industrial control systems, including, but not
19 limited to, information security, supply chain assurance,
20 information assistance and hardware or software assurance.

21 “Enterprise” means the collective departments, agencies
22 and boards within state government that provide services to
23 citizens and other state entities.

24 “Information custodian” means a department, agency or
25 person that has the actual custody of, or is responsible for
26 the accountability for a set of data assets.

27 “Plan of action and milestones” means a remedial plan,
28 or the process of accepting or resolving risk, which helps
29 the information custodian to identify and assess information
30 system security and privacy weaknesses, set priorities and
31 monitor progress toward mitigating the weaknesses.

32 “Privacy impact assessment” means a procedure or tool
33 for identifying and assessing privacy risks throughout the
34 development life cycle of a program or system.

35 “Security controls” means safeguards or
36 countermeasures to avoid, detect, counteract or minimize
37 security risks to physical property, information, computer
38 systems or other assets.

**§5A-6B-3. Powers and duties of Chief Information Security
Officer; staff; rule-making.**

1 (a) The West Virginia Cybersecurity Office is under the
2 supervision and control of a Chief Information Security
3 Officer appointed by the Chief Technology Officer and
4 shall be staffed appropriately by the Office of Technology
5 to implement the provisions of this article.

6 (b) The Chief Information Security Officer has the
7 following powers and duties:

8 (1) Develop policies, procedures and standards
9 necessary to establish an enterprise cybersecurity program
10 that recognizes the interdependent relationship and
11 complexity of technology in government operations and the
12 nature of shared risk of cyber threats to the state;

13 (2) Create a cyber risk management service designed to
14 ensure that officials at all levels understand their
15 responsibilities for managing their agencies' cyber risk;

16 (3) Designate a cyber risk standard for the cybersecurity
17 framework;

18 (4) Establish the cyber risk assessment requirements
19 such as assessment type, scope, frequency and reporting;

20 (5) Provide agencies cyber risk guidance for
21 information technology projects, including the
22 recommendation of security controls and remediation plans;

23 (6) Assist agencies in the development of plans and
24 procedures to manage, assist and recover in the event of a
25 cyber incident;

26 (7) Assist agencies in the management of the framework
27 relating to information custody, classification,
28 accountability and protection;

29 (8) Ensure uniformity and adequacy of the cyber risk
30 assessments;

31 (9) Notwithstanding the provisions of §5A-6B-1(b) of
32 this code, enter into agreements with state government
33 entities exempted from the application of this article or other
34 political subdivisions of the state that desire to voluntarily
35 participate in the cybersecurity program administered
36 pursuant to this article;

37 (10) Develop policy outlining use of the privacy impact
38 assessment as it relates to safeguarding of data and its
39 relationship with technology; and

40 (11) Perform such other functions and duties as
41 provided by law and as directed by the Chief Technology
42 Officer.

43 (c) The Secretary of the Department of Administration
44 shall propose rules for legislative approval in accordance
45 with §29A-3-1 *et seq.* of this code to implement and enforce
46 the provisions of this article.

§5A-6B-4. Responsibilities of agencies for cybersecurity.

1 State agencies and other entities subject to the
2 provisions of this article shall:

3 (1) Undergo an appropriate cyber risk assessment as
4 required by the cybersecurity framework or as directed by
5 the Chief Information Security Officer;

6 (2) Adhere to the cybersecurity standard established by
7 the Chief Information Security Officer in the use of
8 information technology infrastructure;

9 (3) Adhere to enterprise cybersecurity policies and
10 standards;

11 (4) Manage cybersecurity policies and procedures
12 where more restricted security controls are deemed
13 appropriate;

14 (5) Submit all cybersecurity policy and standard
15 exception requests to the Chief Information Security Officer
16 for approval;

17 (6) Complete and submit a cyber risk self-assessment
18 report to the Chief Information Security Officer by
19 December 31, 2020; and

20 (7) Manage a plan of action and milestones based on the
21 findings of the cyber risk assessment and business needs.

§5A-6B-5. Exemption from disclosure.

1 Any information, including, but not limited to, cyber
2 risk assessments, plans of action and milestones,
3 remediation plans, or information indicating the cyber
4 threat, vulnerability, information or data that may identify

5 or expose potential impacts or risk to agencies or to the state
6 or that could threaten the technology infrastructure critical
7 to government operations and services, public safety or
8 health is exempt from §29B-1-1 *et seq.* of this code.

§5A-6B-6. Annual reports.

1 The Chief Information Security Officer shall annually,
2 beginning on December 1, 2019, and on December 1 of each
3 year thereafter, report to the Joint Committee on
4 Government and Finance and to the Governor on the status
5 of the cybersecurity program, including any recommended
6 statutory changes.



CHAPTER 124

**(H. B. 2510 - By Delegates Howell, Pack, Hott,
Hamrick, Dean, Graves, Ellington, Linville,
Higginbotham, Butler and Kessinger)**

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

AN ACT to amend and reenact §30-1-10 of the Code of West Virginia, 1931, as amended, relating to special funds of boards of examination or registration; requiring notice by Treasurer to Legislative Auditor of certain transfers; requiring review of the fee structure of board by Legislative Auditor under certain circumstances; and requiring report to Joint Standing Committee on Government Organization.

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.**

§30-1-10. Disposition of money fines; legislative audit; review of board's fee structure.

1 (a) The secretary of every board referred to in this
2 chapter shall receive and account for all money which it
3 derives pursuant to the provisions of this chapter which are
4 applicable to it. With the exception of money received as
5 fines, each board shall pay all money which is collected into
6 a separate special fund of the State Treasury which has been
7 established for each board. This money shall be used
8 exclusively by each board for purposes of administration
9 and enforcement of its duties pursuant to this chapter. Any
10 money received as fines shall be deposited into the General
11 Revenue Fund of the State Treasury. When the special fund
12 of any board accumulates to an amount which exceeds twice
13 the annual budget of the board or \$10,000, whichever is
14 greater, the State Treasurer shall:

15 (1) Transfer the excess amount to the state General
16 Revenue Fund; and

17 (2) Notify the Legislative Auditor that the transfer has
18 been made.

19 (b) (1) Every licensing board which is authorized by the
20 provisions of this chapter shall be subject to audit by the
21 office of the Legislative Auditor.

22 (2) Within a reasonable time after the State Treasurer
23 notifies the Legislative Auditor of a transfer required to be
24 made under this section, the Legislative Auditor shall
25 conduct a review of the fee structure of the applicable board
26 to determine if the amount of the board's fees generate
27 excessive revenue, when compared to the board's normal
28 expenses. If the Legislative Auditor finds that excess
29 revenue is generated, he or she shall report his or her
30 findings to the Legislature's Joint Standing Committee on
31 Government Organization, along with recommendations on
32 how the fees can be adjusted to generate only the amount
33 the board reasonably needs to operate under this chapter.

CHAPTER 125

(Com. Sub. for H. B. 2601 - By Hanshaw (Mr. Speaker), and Delegates Miley and Nelson)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §5A-10-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5A-10-12, all relating to the real estate division; requiring the review and approval of grounds, buildings, office and other space leases; and providing for review and approval of leasing grounds, buildings, office and other space to nongovernmental entities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. REAL ESTATE DIVISION.

§5A-10-4. Leasing of space by executive director; delegation of authority.

1 (a) The executive director is authorized to lease, in the
2 name of the state, any grounds, buildings, office or other
3 space required by any department, agency, or institution of
4 state government: *Provided*, That the executive director
5 may expressly delegate, in writing, the authority granted to
6 him or her by this article to the appropriate department,
7 agency or institution of state government when the rental
8 and other costs to the state do not exceed the sum specified
9 by regulation in any one fiscal year or when necessary to
10 meet bona fide emergencies arising from unforeseen causes.

11 (b) Any state agency that is authorized to enter into lease
12 agreements must seek the advice and approval of the executive
13 director before entering into any lease of grounds, buildings,

14 office and other space. The executive director shall submit
15 approval of any lease by signing the lease in conjunction with
16 the state agency. The state agencies referenced in §5A-10-2 of
17 this code are exempt from this requirement.

§5A-10-12. Lease of state properties to nongovernmental entities.

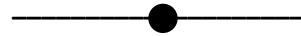
1 (a) All state agencies, except for those listed in §5A-10-
2 2 of this code, intending to lease grounds, buildings, office
3 and other space to nongovernmental entities shall seek the
4 advice and approval of the Real Estate Division to review
5 any lease and ensure the provisions are in the best interest
6 of the state.

7 (b) The Real Estate Division will review the lease and
8 will submit to the state agency:

9 (1) Written approval of the lease; or,

10 (2) Written objections to proposed terms of the lease and
11 suggestions to ensure the lease is in the best interest of the state.

12 The state agency may rebut any objections as
13 circumstances may require, however, the Real Estate Division
14 must approve any objections before the lease can be signed.



CHAPTER 126

**(H. B. 2816 - By Delegates Campbell, Canestraro,
Higginbotham, Lavender-Bowe, Atkinson, Williams,
R. Thompson, Caputo, Hornbuckle, Dean and Pack)**

[Passed March 8, 2019; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §5-14-1, §5-14-2, §5-14-3, §5-14-
5, and §5-14-8 of the Code of West Virginia, 1931, as
amended; to amend and reenact §8-13-5a of said code; to

amend and reenact §16-22A-4 of said code; to amend and reenact §16-35-2 of said code; to amend and reenact §18-20-1a and §18-20-1b of said code; to amend and reenact §29-3-16a of said code; to amend and reenact §52-1-8 of said code; and to amend and reenact §57-5-7 of said code, all relating to removing the terms “hearing impaired,” “hearing impairment,” and “deaf mute” from the West Virginia Code and substituting the terms “deaf or hard of hearing,” “hard of hearing,” “hearing difficulties,” or “difficulties in hearing” according to context.

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 14. WEST VIRGINIA COMMISSION FOR THE
DEAF AND HARD-OF-HEARING.**

§5-14-1. Legislative findings.

1 The Legislature hereby finds and declares that:

2 (a) There is a need for West Virginia to adequately
3 identify the deaf or hard of hearing population and provide
4 efficient and effective services to such population;

5 (b) Deaf or hard of hearing people need to be more
6 involved in the decisions and programs that affect their lives
7 by soliciting and seriously considering their collective
8 opinion on appropriate matters;

9 (c) Cooperation among state and local agencies must be
10 facilitated in an effort to ensure that adequate and
11 appropriate services are available and provided;

12 (d) In order to further the aforementioned goals it is
13 necessary to determine what services exist and what

14 services can be developed in order to match services to
15 individual needs;

16 (e) A rubella epidemic from 1963 to 1965 caused a
17 number of infants in West Virginia to be born deaf or hard
18 of hearing. These individuals are approaching the ages
19 where they will no longer be eligible for educational
20 services, thus requiring services as young adults. The
21 Legislature, therefore, declares that there is an
22 unprecedented and imperative need to plan and prepare
23 for the multiplicity of services required in order to ensure
24 a life-long continuum of services to this particular
25 population;

26 (f) There must be more emphasis on the use of
27 interpreters for deaf and hard of hearing people and on the
28 quality control of such services;

29 (g) There must be more emphasis on the use of
30 telecommunication devices for the deaf (TDDs) and means
31 to provide them for deaf or hard of hearing people;

32 (h) Through the implementation of the provisions of this
33 article, the deaf and hard-of-hearing population of West
34 Virginia will be aided in their efforts to live independent and
35 productive lives.

§5-14-2. Definitions.

1 As used in this article:

2 (a) "Deaf" means severe to profound impairment of the
3 sense of hearing whereby the understanding of speech is
4 unattainable through the ear alone with or without
5 amplification, and visual communication is used as the
6 primary mode of communication.

7 (b) "Hard of hearing" means significant impairment to
8 the sense of hearing, but not to the extent that the person
9 must rely primarily on visual communication.

§5-14-3. Continuation of commission; membership.

1 (a) The West Virginia Commission for the Deaf and
2 Hard of Hearing is continued within the Department of
3 Health and Human Resources consisting of 17 persons,
4 eight of whom shall serve *ex officio*. The remaining
5 members are appointed by the Governor by and with the
6 advice and consent of the Senate. The commission shall
7 meet no less than four times annually. All meetings and
8 activities held by the commission shall be attended by at
9 least two qualified interpreters who shall be hired at the
10 commission's expense or provided free of charge by
11 agencies, organizations or individuals willing to volunteer
12 qualified interpreters.

13 (b) The members are: The Secretary of the Department
14 of Health and Human Resources, or his or her designee; the
15 Commissioner of the Division of Labor, or his or her
16 designee; the Commissioner of the Bureau for Public
17 Health, or his or her designee; the State Superintendent of
18 Schools, or his or her designee; the Director of the Division
19 of Rehabilitation Services, or his or her designee; the
20 Commissioner of the Division of Human Services, or his or
21 her designee; the Chairman of the Advisory Council for the
22 Education of Exceptional Children, or his or her designee;
23 and the Superintendent of the West Virginia School for the
24 Deaf and Blind, or his or her designee, all of whom serve *ex*
25 *officio* with full voting privileges.

26 (c) The Governor shall appoint nine persons, at least
27 five of whom are deaf or hard of hearing, one of whom is
28 the parent of a deaf child, one of whom is a certified
29 teacher of the deaf or hard of hearing, one audiologist and
30 one otolaryngologist. Of the five deaf people, at least
31 three shall be selected from a list of five people
32 recommended by the Board of the West Virginia
33 Association of the Deaf.

§5-14-5. Powers and duties of the commission; information clearinghouse; coordination of interpreters; outreach programs; seminars and training sessions.

1 (a) The commission shall maintain a clearinghouse of
2 information, the purpose of which is to aid deaf or hard of
3 hearing persons and others in obtaining appropriate services or
4 information about such services, including, but not limited to,
5 education, communication (including interpreters), group home
6 facilities, independent living skills, recreational facilities,
7 employment, vocational training, health and mental health
8 services, substance abuse and other services necessary to assure
9 their ability to function in society. The commission shall consult
10 existing public and private agencies and organizations in
11 compiling and maintaining the clearinghouse.

12 (b) The commission shall establish, maintain and
13 coordinate a statewide service to provide courts, state and local
14 legislative bodies and others with a list of qualified and certified
15 interpreters for the deaf and a list of qualified and certified
16 teachers of American sign language.

17 (c) The Secretary of the Department of Health and Human
18 Resources shall promulgate rules pursuant to §29A-3-1 *et seq.* of
19 this code for the state quality assurance evaluation, including the
20 establishment of required qualifications and ethical standards for
21 interpreters, the approval of interpreters, the monitoring and
22 investigation of interpreters and the suspension and revocation of
23 approvals. The commission may conduct interpreter evaluations
24 and collect and expend funds with regard thereto.

25 (d) The commission shall develop an outreach program
26 to familiarize the public with the rights and needs of deaf or
27 hard of hearing people and of available services.

28 (e) The commission shall investigate the condition of the
29 hearing-impaired in this state with particular attention to those
30 who are aged, homeless, needy, victims of rubella and victims
31 of abuse or neglect. It shall determine the means the state
32 possesses for establishing group homes for its hearing-impaired
33 citizens and the need for additional facilities. The commission

34 shall also determine the advisability and necessity of providing
35 services to the multi-handicapped deaf or hard of hearing.

§5-14-8. Executive director; staff.

1 There shall be within the commission an executive
2 director who shall be appointed by the commission and
3 whose compensation shall be fixed by the commission
4 within the budgetary appropriation thereof. The executive
5 director shall be in the exempt class of civil service and may
6 not be a member of the commission. The executive director
7 may attend all meetings of the commission, as well as its
8 committees, but has no vote on decisions or actions of the
9 commission or its committees. The executive director shall
10 carry out the decisions and actions of the commission, hire
11 all staff, administer all affairs of the commission in
12 accordance with its policies and discharge such other duties
13 as the commission shall from time to time determine. The
14 commission may employ such other officers, employees
15 and clerical assistants as it considers necessary and may fix
16 their compensation within the amounts made available by
17 appropriation. To the extent possible, the executive director
18 shall be deaf or hard of hearing and shall be proficient in
19 communicating with deaf or hard of hearing individuals
20 using varying communication modes.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

PART I. POWERS OF TAXATION

§8-13-5a. Public utilities tax.

1 Every municipality has the plenary power and authority
2 to levy and collect an excise tax on the privilege of
3 purchasing, using or consuming, within the corporate limits
4 of the municipality, public utility services and tangible
5 personal property from public utilities subject to the
6 jurisdiction of the Public Service Commission of West
7 Virginia. The tax is computed on the basis of an amount not

8 to exceed two percent of the gross amount of each periodic
9 statement rendered purchasers or consumers by public
10 utilities: *Provided*, That sales of tangible personal property
11 such as appliances or the like, as distinguished from the
12 public service supplied, are not included in the gross amount
13 subject to the measure of this tax: *Provided, however*, That
14 this tax does not apply to sales of telecommunications
15 services to another telecommunications provider for the
16 purposes of access, interconnection or resale to consumers.
17 Charges or fees for items on the periodic statement that are
18 not public utility services, including surcharges for
19 telecommunications relay services for the deaf or hard of
20 hearing and fees for enhanced emergency telephone
21 systems, are not included in the gross amount subject to the
22 measure of this tax. The purchasers or consumers shall pay
23 to the public utilities the amount of the tax levied pursuant
24 to this section which is added to and constitutes a part of the
25 cost of the service or property so purchased or consumed
26 and is collectible as such by the public utilities who shall
27 account to the municipality levying same for all tax paid by
28 the purchasers or consumers pursuant to the provisions of
29 any ordinance imposing the tax.

30 Any ordinance imposing the tax shall require the
31 collection thereof uniformly from all purchasers and
32 consumers of all the services and property within the
33 corporate limits of the municipality and contain reasonable
34 rules governing the collection thereof by the utilities and the
35 method of its payment and accounting to the municipality:
36 *Provided*, That the tax is not effective until the municipality
37 gives 60 days written notice by certified mail to any utility
38 doing business therein of the effective date of the ordinance.
39 Any required separation of gross income shall occur in the
40 ordinance whenever necessary to comply with state or
41 federal law: *Provided, however*, That the tax authorized by
42 this section may not be levied upon charges for telephone
43 services which are paid by the insertion of coins into coin-
44 operated telephones, and specific charges for telephone
45 calls to points outside the taxing municipality: *Provided*

46 *further*, That specific charges for telephone calls to points
47 outside the taxing municipality is construed to mean
48 separately itemized or bulk-billed charges for long distance
49 telecommunications service to points outside the local
50 exchange service area. The charges subject to the tax
51 authorized by this section include local usage charges
52 applicable to telephone calls originating within the
53 corporate limits of the municipality which imposes the tax,
54 regardless of where the calls terminate, and also include the
55 federal subscriber line charge.

56 Notwithstanding any other provisions of the law to the
57 contrary contained in the Code of West Virginia, 1931, as
58 amended, the provisions of this section are in addition to all
59 other taxing authority heretofore granted municipalities.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 22A. TESTING OF NEWBORN INFANTS FOR HEARING IMPAIRMENTS.

§16-22A-4. Hearing impairment testing advisory committee established.

1 (a) There is hereby established a West Virginia hearing
2 difficulties testing advisory committee which shall advise
3 the Director of the Division of Health regarding the
4 protocol, validity, monitoring and cost of testing procedures
5 required under this article. This committee is to meet four
6 times per year for the initial two years and on the call of the
7 director thereafter. The director shall serve as the chair and
8 shall appoint 12 members, one representing each of the
9 following groups:

- 10 (1) A representative of the health insurance industry;
- 11 (2) An otolaryngologist or otologist;
- 12 (3) An audiologist with experience in evaluating infants;
- 13 (4) A neonatologist;

- 14 (5) A pediatrician;
 - 15 (6) A hospital administrator;
 - 16 (7) A speech or language pathologist;
 - 17 (8) A teacher or administrative representative from the
18 West Virginia school of the deaf;
 - 19 (9) A parent of a deaf or hard of hearing child;
 - 20 (10) A representative from the office of early
21 intervention services within the Department of Health and
22 Human Resources;
 - 23 (11) A representative from the state Department of
24 Education; and
 - 25 (12) A representative from the West Virginia
26 commission for the deaf and hard-of-hearing.
- 27 (b) Members of this advisory committee shall serve
28 without compensation. A majority of members constitutes a
29 quorum for the transaction of all business. Members shall
30 serve for two-year terms and may not serve for more than
31 two consecutive terms.

ARTICLE 35. LEAD ABATEMENT.

§16-35-2. Legislative findings.

- 1 (a) The Legislature hereby finds and declares that:
 - 2 (1) Lead is a toxic substance and harmful to the citizens
3 of this state;
 - 4 (2) Lead poisoning is a devastating health hazard,
5 particularly to young children, and results in serious long-
6 term health effects;
 - 7 (3) Children exposed to even low levels of lead exhibit
8 learning disabilities, decreased growth, hyperactivity,
9 deafness or hearing difficulties, and neurological damage;

10 (4) Workers and others who come into contact with lead
11 when removing or remediating lead-based materials are also
12 at risk of lead poisoning;

13 (5) Exposure occurs from contact with materials
14 containing lead, including, but not limited to, lead-based
15 paint chips, lead dust, and lead-contaminated soil;

16 (6) The most significant source of exposure is lead-
17 based paint, particularly in houses built prior to one
18 thousand nine hundred seventy-eight;

19 (7) The danger posed by lead-based paint hazards can
20 be controlled by abatement or interim controls that limit
21 exposure to lead-based paint hazards; and

22 (8) The public health and safety of this state will be
23 better protected when all persons who handle lead-
24 contaminated substances are thoroughly trained and
25 knowledgeable regarding safe methods of handling and
26 disposing of such materials.

27 (b) Therefore, It is the purpose of this article to protect
28 the health of the children of the state and those who
29 undertake remediation of the lead health hazard by
30 establishing guidelines for the assessment and removal of
31 lead hazards from homes and other buildings where children
32 are frequently present and exposed to the danger of lead
33 poisoning.

CHAPTER 18. EDUCATION.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1a. Preschool programs for severely disabled children; rules and regulations.

1 (a) During the school year beginning on July 1, 1985,
2 each county board of education shall develop a coordinated
3 service delivery plan in accordance with standards for
4 preschool programs for severely disabled children to be

5 developed by the State Board of Education and begin
6 services where plans are already developed.

7 (b) Only in any year in which funds are made available
8 by legislative appropriation, and only to the extent of such
9 funding, each county board of education shall establish and
10 maintain a special educational program, including, but not
11 limited to, special classes and home-teaching and visiting-
12 teacher services for all severely disabled children between
13 the ages of three and five according to the following
14 schedule:

15 (1) By the school year beginning on July 1, 1986, and
16 thereafter, for severely disabled children who are age four
17 before September 1, 1986;

18 (2) By the school year beginning on July 1, 1987, and
19 thereafter, for severely disabled children who are age three
20 before September 1, 1987.

21 As used in this section, the term “severely disabled
22 children” means those children who fall in any one of the
23 following categories as defined or to be defined in the State
24 Board of Education standards for the education of
25 exceptional children: Severe behavioral disorders, severely
26 speech and language impaired, deaf-blind, deafness or
27 hearing difficulties, autistic, physically handicapped,
28 disabled profoundly intellectually disabled, trainable
29 intellectually disabled or visually impaired.

30 Before August 1, 1985, the State Board of Education
31 shall adopt rules and regulations to advance and accomplish
32 this program and to assure that an appropriate educational
33 program is available to all such children in the state,
34 including children in mental health facilities, residential
35 institutions and private schools.

36 This section does not prevent county boards of
37 education from providing special education programs,
38 including, but not limited to, special schools, classes,
39 regular class programs and home-teaching or visiting-

40 teacher services for severely disabled preschool children
41 prior to such times as are required by this section. In
42 addition, county boards of education may provide these
43 services to preschool exceptional children in disability
44 categories other than those listed above.

**§18-20-1b. Preschool programs for handicapped children;
rules and regulations.**

1 (a) During the school year beginning on July 1, 1991,
2 each county board of education shall develop a coordinated
3 service delivery plan in accordance with standards for
4 preschool programs for handicapped children to be
5 developed by the State Board of Education and begin
6 services where plans are already developed.

7 (b) Each county board of education shall establish and
8 maintain special education programs, including, but not
9 limited to, special classes, regular classes and home-
10 teaching and visiting-teacher services for all handicapped
11 children ages three through five, inclusive.

12 As used in this section, the term “handicapped children”
13 means those children who fall in any one of the following
14 categories as defined or to be defined in the State Board of
15 Education standards for the education of exceptional
16 children: Severe behavioral disorders, communication
17 disordered, deaf-blind, developmentally delayed, deaf or
18 hard of hearing, other health impaired including autism,
19 physically handicapped, mentally impaired or visually
20 impaired.

21 Before August 1, 1991, the State Board of Education
22 shall adopt rules to advance and accomplish this program
23 and to assure that an appropriate educational program is
24 available to all such children in the state, including children
25 in mental health facilities, residential institutions, foster
26 care, correctional facilities and private schools.

27 This section does not prevent county boards of
28 education from providing special education programs,

29 including, but not limited to, special schools or classes,
30 regular class programs and home-teaching or visiting-
31 teacher services for severely handicapped preschool
32 children prior to such times as are required by this section.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units, schools, and daycare facilities; penalty.

1 (a) An operational smoke detector shall be installed in
2 the immediate vicinity of each sleeping area within all one-
3 and two-family dwellings, including any “manufactured
4 home” as that term is defined in §21-9-2(j) of this code. The
5 smoke detector shall be capable of sensing visible or
6 invisible particles of combustion and shall meet the
7 specifications and be installed as provided in the current
8 edition of the National Fire Protection Association Standard
9 72, “Standard for the Installation, Maintenance, and Use of
10 Household Fire Warning Equipment” and in the
11 manufacturer’s specifications. When activated, the smoke
12 detector shall provide an alarm suitable to warn the
13 occupants of the danger of fire.

14 (b) The owner of each dwelling described in subsection
15 (a) of this section shall provide, install, and replace the
16 operational smoke detectors required by this section. To
17 assure that the smoke detector continues to be operational,
18 in each dwelling described in subsection (a) of this section
19 which is not occupied by the owner of the dwelling, the
20 tenant in any dwelling shall perform routine maintenance on
21 the smoke detectors within the dwelling.

22 (c) Where a dwelling is not occupied by the owner and
23 is occupied by an individual who is deaf or hard of hearing,
24 the owner shall, upon written request by or on behalf of the
25 individual, provide and install a smoke detector with a light

26 signal sufficient to warn the deaf or hard of hearing
27 individual of the danger of fire.

28 (d) An automatic fire sprinkler system installed in
29 accordance with the current edition of the National Fire
30 Protection Association Standard 13D, "Standard for the
31 Installation of Sprinkler Systems in Residential
32 Occupancies" may be provided in lieu of smoke detectors.

33 (e) After investigating a fire in any dwelling described
34 in subsection (a) of this section, the local investigating
35 authority shall issue to the owner a smoke detector
36 installation order in the absence of the required smoke
37 detectors.

38 (f) An operational single station carbon monoxide
39 detector with a suitable alarm or a combination smoke
40 detector and carbon monoxide detector, which shall be
41 alternating current (AC) powered, either plugged directly in
42 to an electrical outlet that is not controlled by a switch or
43 hardwired into an alternating current (AC) electrical source,
44 with battery backup, shall be installed, maintained, tested,
45 repaired, or replaced, if necessary, in accordance with the
46 manufacturer's direction:

47 (1) In any newly constructed residential unit which has
48 a fuel-burning heating or cooking source including, but not
49 limited to, an oil or gas furnace or stove;

50 (2) In any residential unit which is connected to a newly
51 constructed building, including, but not limited to, a garage,
52 storage shed, or barn, which has a fuel-burning heating or
53 cooking source, including, but not limited to, an oil or gas
54 furnace or stove;

55 (3) Effective September 1, 2012, in either a common
56 area where the general public has access or all rooms in
57 which a person will be sleeping that are adjoining to and
58 directly below and above all areas or rooms that contain
59 permanently installed fuel-burning appliances and

60 equipment that emit carbon monoxide as a byproduct of
61 combustion located within all apartment buildings, boarding
62 houses, dormitories, long-term care facilities, adult or child
63 care facilities, assisted living facilities, one- and two-family
64 dwellings intended to be rented or leased, hotels and motels.

65 (g) Effective January 1, 2013, all single station carbon
66 monoxide detectors with a suitable alarm or a combination
67 smoke detector and carbon monoxide detectors shall be
68 hardwired into an alternating current (AC) electrical source,
69 with battery backup, when installed in all newly constructed
70 apartment buildings, boarding houses, dormitories,
71 hospitals, long-term care facilities, adult or child care
72 facilities, assisted living facilities, one- and two-family
73 dwellings intended to be rented or leased, hotels and motels.

74 (h) In any long-term care facility that is staffed on a 24
75 hour, seven day a week basis, the single station carbon
76 monoxide detector with a suitable alarm or a combination
77 smoke detector and carbon monoxide detector is only
78 required to be installed in an area of the facility that permits
79 the detector to be audible to the staff on duty.

80 (i) Effective January 1, 2019, carbon monoxide
81 detectors shall be installed in every public or private school
82 or daycare facility that uses a fuel-burning heating system
83 or other fuel-burning device that produces combustion
84 gases. A carbon monoxide detector shall be located in each
85 area with a fuel-burning heating system or other fuel-
86 burning device that produces combustion gases.

87 (j) Any person installing a carbon monoxide detector in
88 a residential unit shall inform the owner, lessor, or the
89 occupant or occupants of the residential unit of the dangers
90 of carbon monoxide poisoning and instructions on the
91 operation of the installed carbon monoxide detector.

92 (k) When repair or maintenance work is undertaken on
93 a fuel-burning heating or cooking source or a venting
94 system in an existing residential unit, the person making the

95 repair or performing the maintenance shall inform the
96 owner, lessor, or the occupant or occupants of the unit being
97 served by the fuel-burning heating or cooking source or
98 venting system of the dangers of carbon monoxide
99 poisoning and recommend the installation of a carbon
100 monoxide detector.

101 (l) Any person who violates any provision of this section
102 is guilty of a misdemeanor and, upon conviction thereof, for
103 a first offense, shall be fined \$250. For a second offense, the
104 person is guilty of a misdemeanor and, upon conviction
105 thereof, shall be fined \$750. For a third and subsequent
106 offenses, the person is guilty of a misdemeanor and, upon
107 conviction thereof, shall be fined \$2000.

108 (m) A violation of this section may not be considered to
109 constitute evidence of negligence or contributory
110 negligence or comparative negligence in any civil action or
111 proceeding for damages.

112 (n) A violation of this section may not constitute a
113 defense in any civil action or proceeding involving any
114 insurance policy.

115 (o) Nothing in this section shall be construed to limit the
116 rights of any political subdivision in this state to enact laws
117 imposing upon owners of any dwelling or other building
118 described in subsection (a) or (f) of this section a greater
119 duty with regard to the installation, repair, and replacement
120 of the smoke detectors or carbon monoxide detectors than is
121 required by this section.

CHAPTER 52. JURIES.

ARTICLE 1. PETIT JURIES.

§52-1-8. Disqualification from jury service.

1 (a) The court, shall determine whether any prospective juror
2 is disqualified for jury service on the basis of information
3 provided on the juror qualification form or interview with the

4 prospective juror or other competent evidence. The clerk shall
5 enter this determination in the space provided on the juror
6 qualification form and on the alphabetical lists of names drawn
7 from the jury wheel or jury box.

8 (b) A prospective juror is disqualified to serve on a jury
9 if the prospective juror:

10 (1) Is not a citizen of the United States, at least 18 years
11 old and a resident of the county;

12 (2) Is unable to read, speak and understand the English
13 language. For the purposes of this section, the requirement
14 of speaking and understanding the English language is met
15 by the ability to communicate in American Sign Language
16 or Signed English;

17 (3) Is incapable, by reason of substantial physical or mental
18 disability, of rendering satisfactory jury service. A person
19 claiming this disqualification may be required to submit a
20 physician's certificate as to the disability and the certifying
21 physician is subject to inquiry by the court at its discretion;

22 (4) Has, within the preceding two years, been
23 summoned to serve as a petit juror, grand juror or magistrate
24 court juror and has attended sessions of the magistrate or
25 circuit court and been reimbursed for his or her expenses as
26 a juror pursuant to the provisions of §52-1-21 or §52-2-13
27 of this code, or pursuant to an applicable rule or regulation
28 of the Supreme Court of Appeals promulgated pursuant to
29 the provisions of §50-5-8 of this code;

30 (5) Has lost the right to vote because of a criminal
31 conviction; or

32 (6) Has been convicted of perjury, false swearing or any
33 crime punishable by imprisonment in excess of one year
34 under the applicable law of this state, another state or the
35 United States.

36 (c) A prospective juror 70 years of age or older is not
37 disqualified from serving but shall be excused from service
38 by the court upon his or her request.

39 (d) A prospective grand juror is disqualified to serve on
40 a grand jury if he or she is an officeholder under the laws of
41 the United States or of this state except that the term
42 “officeholder” does not include, notaries public.

43 (e) A person who is physically disabled and can render
44 competent service with reasonable accommodation is not
45 ineligible to act as juror and may not be dismissed from a
46 jury panel on the basis of disability alone. The circuit judge
47 shall, upon motion by either party or upon his or her own
48 motion, disqualify a disabled juror if the circuit judge finds
49 that the nature of potential evidence in the case including,
50 but not limited to, the type or volume of exhibits or the
51 disabled juror’s ability to evaluate a witness or witnesses,
52 unduly inhibits the disabled juror’s ability to evaluate the
53 potential evidence. For purposes of this section:

54 (1) Reasonable accommodation includes, but is not
55 limited to, certified interpreters for the deaf and hard of
56 hearing, spokespersons for the speech impaired, real-time
57 court reporting and readers for the visually impaired.

58 (2) The court shall administer an oath or affirmation to
59 any person present to facilitate communication for a
60 disabled juror. The substance of the oath or affirmation shall
61 be that any person present as an accommodation to a
62 disabled juror will not deliberate on his or her own behalf,
63 although present throughout the proceedings, but act only to
64 accurately communicate for and to the disabled juror.

65 (f) Nothing in this article limits a party’s right to
66 preemptory strikes in civil or criminal actions.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§57-5-7. Interpreters required.

1 (a) In any court proceeding wherein a party or witness
2 or juror cannot readily understand or verbally communicate
3 the English language because the witness or juror is deaf or

4 because of any other hearing difficulties, such person shall
5 have the right to have a qualified interpreter to assist the
6 witness or juror at every stage of the proceeding. Such right
7 shall also pertain in any proceeding before administrative
8 boards, commissions or agencies of this state or any
9 political subdivision or municipality thereof, and in
10 coroners' inquests and grand jury proceedings.

11 (b) The director of the administrative office of the
12 Supreme Court of Appeals shall establish a program to
13 facilitate the use of interpreters in courts of this state and in
14 extra-judicial criminal proceedings as provided for in this
15 section.

16 (1) The director shall prescribe, determine and certify
17 the qualifications of persons who may serve as certified
18 interpreters in courts of this state in proceedings involving
19 the deaf and hard of hearing. Persons certified by the
20 director shall be interpreters certified by the national
21 registry of interpreters for the deaf, or the West Virginia
22 registry of interpreters for the deaf or approved by the chief
23 of services for the deaf and hard of hearing of West Virginia
24 of the West Virginia Division of Vocational Rehabilitation,
25 or shall be such other persons deemed by the director to be
26 qualified by education, training and experience. The
27 director shall maintain a current master list of all interpreters
28 certified by the director and shall report annually on the
29 frequency of requests for, and the use and effectiveness of,
30 interpreters.

31 (2) Each circuit court shall maintain on file in the office
32 of the clerk of the court a list of all persons who have been
33 certified as oral or manual interpreters for the deaf and hard
34 of hearing by the director of the administrative office of the
35 Supreme Court of Appeals in accordance with the
36 certification program established pursuant to this section.

37 (3) In any criminal or juvenile proceeding, or other
38 proceeding described in §51-11-5 of this code, the judge of
39 the circuit court in which such proceeding is pending, or, if

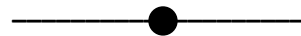
40 such proceeding is in a magistrate court, then the judge of
41 the circuit court to which such proceeding may be appealed
42 or presented for judicial review, shall, with the assistance of
43 the director of the administrative office of the Supreme
44 Court of Appeals, utilize the services of the most available
45 certified interpreter, or when no certified interpreter is
46 reasonably available, as determined by the judge, the
47 services of an otherwise competent interpreter, if the judge
48 determines on his or her own motion or on the motion of a
49 party that such party or a witness who may present
50 testimony in the proceeding suffers from hearing difficulties
51 so as to inhibit such party's comprehension of the
52 proceedings or communication with counsel or the
53 presiding judicial officer, or so as to inhibit such witness'
54 comprehension of questions and the presentation of such
55 testimony. The utilization of an interpreter shall be
56 appropriate at any stage of the proceeding, judicial or extra-
57 judicial, at which a person would be entitled to
58 representation by an attorney and a waiver of the right to
59 counsel shall not constitute a waiver of the right to an
60 interpreter as provided for by this section.

61 (c) Whenever a qualified interpreter is appointed
62 pursuant to the provisions of subsection (b) of this section,
63 or to accommodate a juror, the court shall, at the conclusion
64 of the proceedings or interrogation, by order, fix the
65 compensation of such interpreter. The compensation shall
66 include reimbursement for all reasonable and necessary
67 expenses actually incurred in the performance of such
68 duties, but expenses shall not be incurred in excess of the
69 prevailing rate for state employees. In all such appointments
70 arising from subdivision (3), subsection (b) of this section,
71 the compensation shall be paid by the State Auditor from
72 the fund administered by the Supreme Court of Appeals for
73 other court costs. In other proceedings before any circuit or
74 magistrate court, Supreme Court of Appeals or before any
75 administrative boards, commissions and agencies, the
76 compensation shall be fixed by such court, board,

77 commission or agency and paid, within the limit of available
78 funds, by such court, board, commission or agency.

79 (d) In any proceeding described in subdivision (3),
80 subsection (b) of this section, if the circuit judge does not
81 appoint an interpreter, an individual requiring the services
82 of an interpreter may seek the assistance of the clerk of the
83 circuit court or the director of the administrative office of
84 the Supreme Court of Appeals in obtaining the assistance of
85 a certified interpreter.

86 (e) Whenever an interpreter is necessary in any court
87 proceeding because a witness or party speaks only a foreign
88 language or for any other reason, an interpreter shall be
89 sworn truly to interpret.



CHAPTER 127

(H. B. 2856 - By Delegate Householder)
[By Request of the West Virginia State Auditor]

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

[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §32-4-406 of the Code of West Virginia, 1931, as amended, relating to the administration of the operating fund of the securities division of the Auditor's office; and providing for certain funds to be transferred to the General Revenue Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS.

§32-4-406. Administration of chapter; operating fund for securities department.

1 (a) This chapter shall be administered by the Auditor of
2 this state and he or she is hereby designated, and shall be,
3 the commissioner of securities of this state. He or she has
4 the power and authority to appoint or employ such assistants
5 as are necessary for the administration of this chapter.

6 (b) The Auditor shall set up a special operating fund for
7 the securities division in his or her office. The Auditor shall
8 pay into the fund 20 percent of all fees collected as provided
9 for in this chapter. If, at the end of any fiscal year, the
10 balance in the special operating fund exceeds 20 percent of
11 the gross revenues from the special operating fund
12 operations, the excess shall be transferred to the General
13 Revenue Fund.

14 The special operating fund shall be used by the Auditor
15 to fund the operation of the securities division and the
16 general operations of the Auditor's office. The special
17 operating fund shall be appropriated by line item by the
18 Legislature.

19 (c) Moneys payable for assessments established by §32-
20 4-407a of this code shall be collected by the commissioner
21 and deposited into the General Revenue Fund.

22 (d) It is unlawful for the commissioner or any of his or
23 her officers or employees to use for personal benefit any
24 information which is filed with or obtained by the
25 commissioner and which is not made public. No provision
26 of this chapter authorizes the commissioner or any of his or
27 her officers or employees to disclose any information except
28 among themselves or when necessary or appropriate in a
29 proceeding or investigation under this chapter. No provision
30 of the chapter either creates or derogates from any privilege
31 which exists at common law or otherwise when
32 documentary or other evidence is sought under a subpoena
33 directed to the commissioner or any of his or her officers or
34 employees.



CHAPTER 128

**(H. B. 2934 - By Delegates Barrett, Householder,
Westfall, Bates, Graves, Fluharty, Criss, Sponaugle,
Williams, Skaff and Storch)**

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §29-22E-1, §29-22E-2, §29-22E-3, §29-22E-4, §29-22E-5, §29-22E-6, §29-22E-7, §29-22E-8, §29-22E-9, §29-22E-10, §29-22E-11, §29-22E-12, §29-22E-13, §29-22E-14, §29-22E-15, §29-22E-16, §29-22E-17, §29-22E-18, §29-22E-19, §29-22E-20, §29-22E-21, §29-22E-22, §29-22E-23, and §29-22E-24, all relating to permitting interactive wagering authorized as West Virginia Lottery interactive wagering activities; providing legislative findings; defining terms; detailing duties and powers of the West Virginia Lottery Commission; providing rule-making authority and emergency rule-making authority; requiring commission to levy and collect all fees, surcharges, civil penalties, and weekly tax on adjusted gross interactive wagering receipts and deposit them into the West Virginia Lottery Interactive Wagering Fund; limiting licensees who may offer interactive wagering to existing racetrack casinos and the casino in a historic resort hotel; providing for four types of licenses to be issued related to interactive wagering; establishing license requirements and prohibitions; authorizing licensing fees; requiring adoption and posting of house rules; defining duties of an operator conducting interactive wagering; requiring the posting of betting limits; authorizing interactive wagering agreements with other governments; providing powers and duties of commission and operators; limiting certain activities of employees; authorizing the West Virginia Lottery to levy and collect a

privilege tax in the amount of 15 percent of adjusted gross interactive wagering receipts; requiring reports and submission of taxes; clarifying that tax is in lieu of certain other taxes; providing that certain expenditures related to interactive wagering are facility modernization improvements eligible for recoupment; providing that credits are not allowed against the privilege tax; creating the West Virginia Lottery Interactive Wagering Fund; authorizing the West Virginia Lottery to collect an administrative allowance from gross interactive wagering receipts; providing for distribution of moneys deposited in the West Virginia Lottery Interactive Wagering Fund; authorizing certain agreements between the West Virginia Lottery and law enforcement; imposing civil penalties for certain violations, and exceptions thereto; prohibiting unauthorized interactive wagering in this state; establishing crimes related to unauthorized interactive wagering and imposing criminal penalties; establishing crimes related to authorized interactive wagering and imposing criminal penalties; preempting provisions from state and local law; and establishing certain exemptions from federal law.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 22E. WEST VIRGINIA LOTTERY
INTERACTIVE WAGERING ACT.**

§29-22E-1. Short title.

1 This article shall be known and may be cited as the West
2 Virginia Lottery Interactive Wagering Act.

**§29-22E-2. State authorization of interactive wagering at
licensed racetrack facilities and historic resort hotel;
legislative findings, and declarations.**

1 (a) *Operation of West Virginia Lottery interactive*
2 *wagering.* — Notwithstanding any provision of law to the
3 contrary, the operation of interactive wagering and ancillary
4 activities are only lawful when conducted in accordance

5 with the provisions of this article and rules of the
6 commission.

7 (b) *Legislative findings.* —

8 (1) The Legislature finds that the operation of the four
9 racetracks and the historic resort hotel in this state play a
10 critical role in the economy of this state, and such
11 constitutional lotteries are rightfully authorized as state
12 enterprises consistent with the rights and powers granted to
13 the states under the Tenth Amendment of the United States
14 Constitution. The federal government is a government of
15 limited and enumerated powers, and powers not delegated
16 to the United States by the Constitution nor prohibited by it
17 to the states are reserved for the states and its respective
18 citizens.

19 (2) The Legislature finds that section 36, article VI of
20 the Constitution of the State of West Virginia grants the
21 state the exclusive right to lawfully own and operate a
22 lottery in this state. Authorization of wagering on any
23 constitutional lottery within West Virginia is within the
24 state's sovereign rights as a state to act in the best interest
25 of its citizens.

26 (3) The Legislature finds that it is in the best interests of
27 the State of West Virginia for the state to operate a lottery
28 in the form of interactive wagering and that it is the intent
29 of the Legislature to authorize interactive wagering within
30 the state and through compacts with other approved
31 jurisdictions.

32 (4) The Legislature finds that illegal interactive
33 wagering channels operating throughout the United States
34 pose a critical threat to the safety and welfare of the citizens
35 of West Virginia and that creating civil and criminal
36 penalties to prosecute illegal operators, while transferring
37 this black market demand into a secure and highly regulated
38 environment, will protect the public and positively benefit
39 state revenues and the state's economy.

40 (5) The Legislature finds that the most effective and
41 efficient manner in which the state can operate and regulate
42 the forms of lottery authorized by the provisions of this
43 article is to limit the number of authorized operators to those
44 who are licensed, pursuant to the provisions of §29-22A-1
45 *et seq.* of this code, and to facilities licensed to operate video
46 lottery terminals, pursuant to the provisions of §29-25-1 *et*
47 *seq.* of this code.

48 (6) The Legislature finds that the granting of licenses
49 pursuant to the provisions of this article, while maintaining
50 all ownership rights and exercising control through strict
51 regulation of all West Virginia Lottery interactive wagering
52 authorized by the provisions of this article, constitutes an
53 appropriate exercise by the Legislature of the power granted
54 it by the provisions of section 36, article VI of the
55 Constitution of the State of West Virginia.

56 (7) The Legislature finds that the operation of West
57 Virginia Lottery interactive wagering at racetracks, licensed
58 pursuant to the provisions of §29-22A-1 *et seq.* of this code,
59 and at a historic resort hotel, licensed pursuant to the
60 provisions of §29-25-1 *et seq.* of this code, serves to protect,
61 preserve, promote, and enhance the tourism industry of the
62 state as well as the general fiscal wellbeing of the state and
63 its subdivisions.

§29-22E-3. Definitions.

1 For the purposes of this article, the following terms have
2 the meanings ascribed to them in this section:

3 (1) “Adjusted gross interactive wagering receipts”
4 means an operator’s gross interactive wagering receipts
5 from West Virginia Lottery interactive wagering, less
6 winnings paid to wagerers in such games.

7 (2) “Commission” or “State Lottery Commission”
8 means the West Virginia Lottery Commission, created by
9 §29-22-1 *et seq.* of this code.

10 (3) “Director” means the Director of the West Virginia
11 State Lottery Commission, appointed pursuant to §29-22-6
12 of this code.

13 (4) “Gaming” or “interactive gaming” means wagering
14 on any authorized interactive game. Authorized interactive
15 games are computerized or virtual versions of any game of
16 chance or digital simulation thereof, including, but not
17 limited to, casino themed slot simulations, table games, and
18 other games approved by the commission.

19 (5) “Government” means any governmental unit of a
20 national, state, or local body exercising governmental
21 functions, other than the United States Government.

22 (6) “Gross interactive wagering receipts” means the
23 total gross receipts received by a licensed gaming facility
24 from interactive wagering.

25 (7) “Interactive gaming operator” or “operator” means
26 a licensed gaming facility which has elected to operate
27 authorized West Virginia Lottery interactive wagering
28 activities or an interactive gaming system on behalf of or in
29 cooperation with an interactive gaming licensee.

30 (8) “Interactive gaming provider” or “management
31 services provider” means an interactive gaming licensee or
32 an interactive gaming operator with a valid permit acting on
33 behalf of or in partnership with an interactive gaming
34 licensee.

35 (9) “Interactive wagering account” means a financial
36 record established by a licensed gaming facility for an
37 individual patron in which the patron may deposit and
38 withdraw funds for interactive wagering and other
39 authorized purchases, and to which the licensed gaming
40 facility may credit winnings or other amounts due to that
41 patron or authorized by that patron.

42 (10) “Interactive wagering agreement” means a written
43 agreement between the commission and one or more other

44 governments whereby persons who are physically located in
45 a signatory jurisdiction may participate in interactive
46 wagering conducted by one or more operators licensed by
47 the signatory governments.

48 (11) “Interactive wagering fund” means the special fund
49 in the State Treasury, created in §29-22E-17 of this code.

50 (12) “License” means any license, applied for or issued
51 by the commission under this article, including, but not
52 limited to:

53 (A) A license to act as agent of the commission in
54 operating West Virginia Lottery interactive wagering at a
55 licensed gaming facility (operator license or West Virginia
56 Lottery interactive wagering license);

57 (B) A license to supply a gaming facility, licensed under
58 this article, to operate interactive wagering with interactive
59 wagering equipment or services necessary for the operation
60 of interactive wagering (supplier license); or

61 (C) A license to be employed at a racetrack or gaming
62 facility, licensed under this article, to operate West Virginia
63 Lottery interactive wagering when the employee works in a
64 designated gaming area that has interactive wagering or
65 performs duties in furtherance of or associated with the
66 operation of interactive wagering at the licensed gaming
67 facility (occupational license).

68 (13) “Licensed gaming facility” or “gaming facility”
69 means a designated area on the premises of an existing
70 historic resort hotel, pursuant to §29-25-1 *et seq.* of this
71 code, or the facility of an entity authorized to operate
72 racetrack video lottery machines, pursuant to §29-22A-1 *et*
73 *seq.* of this code, licensed under this article, to conduct West
74 Virginia Lottery interactive wagering.

75 (14) “Lottery” means the public gaming systems or
76 games regulated, controlled, owned, and operated by the
77 State Lottery Commission in the manner provided by

78 general law, as provided in this article, and in §29-22-1 *et*
79 *seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et seq.*, §29-22C-1 *et*
80 *seq.*, §29-22D-1 *et seq.*, and §29-25-1 *et seq.* of this code.

81 (15) “National criminal history background check
82 system” means the criminal history record system
83 maintained by the Federal Bureau of Investigation, based on
84 fingerprint identification or any other method of positive
85 identification.

86 (16) “Wager” means a sum of money or thing of value
87 risked on an uncertain occurrence.

88 (17) “West Virginia Lottery interactive wagering” or
89 “interactive wagering” or “interactive gaming” means the
90 placing of wagers remotely and in real time on any
91 authorized interactive game with any interactive gaming
92 provider, using any communications technology, by means
93 of any electronic or mobile device or other interface capable
94 of providing a means of input and output. The term does not
95 include:

96 (A) Pari-mutuel betting on the outcome of horse or dog
97 races, authorized by §19-23-12a and §19-23-12d of this
98 code;

99 (B) Lottery games of the West Virginia State Lottery,
100 authorized by §29-22-1 *et seq.* of this code;

101 (C) Racetrack video lottery, authorized by §29-22A-1 *et*
102 *seq.* of this code;

103 (D) Limited video lottery, authorized by §29-22B-1 *et*
104 *seq.* of this code;

105 (E) Racetrack table games, authorized by §29-22C-1 *et*
106 *seq.* of this code;

107 (F) Video lottery and table games, authorized by §29-
108 25-1 *et seq.* of this code;

109 (G) Sports wagering, authorized by §29-22D-1 *et seq.*;
110 and

111 (H) Daily Fantasy Sports (DFS).

112 (18) “West Virginia Lottery interactive wagering
113 license” means authorization granted under this article by
114 the commission to a gaming facility that is already licensed
115 under §29-22A-1 *et seq.* or §29-25-1 *et seq.* of this code,
116 which permits the gaming facility as an agent of the
117 commission to operate West Virginia Lottery interactive
118 wagering on the grounds where video lottery is conducted
119 by the licensee or through any other authorized interactive
120 platform developed by the gaming facility. This term is
121 synonymous with “operator’s license.”

§29-22E-4. Commission duties and powers.

1 (a) In addition to the duties set forth elsewhere in this
2 article, and in §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-22B-
3 1 *et seq.*, §29-22C-1 *et seq.*, §29-22D-1 *et seq.*, and §29-25-
4 1 *et seq.* of this code, the commission shall have the
5 authority to regulate interactive wagering and the conduct
6 of interactive gaming.

7 (b) The commission shall examine the regulations
8 implemented in other states where interactive wagering is
9 conducted and shall, as far as practicable, adopt a similar
10 regulatory framework through promulgation of rules.

11 (c) The commission has the authority, pursuant to §29A-
12 1-1 *et seq.* and §29A-3-1 *et seq.* of this code, to promulgate
13 or otherwise enact any legislative, interpretive, and
14 procedural rules the commission considers necessary for the
15 successful implementation, administration, and
16 enforcement of this article. Rules proposed by the
17 commission before July 1, 2020, may be promulgated as
18 emergency rules pursuant to §29A-3-15 of this code.

19 (1) Rules promulgated by the commission may include,
20 but are not limited to, those governing the acceptance of

21 wagers on interactive games; maximum wagers which may
22 be accepted by an operator from any one patron on any one
23 interactive game; method of accounting to be used by
24 operators; types of records which shall be kept; use of credit
25 and checks by patrons; type of system for wagering;
26 protections for patrons placing wagers; and promotion of
27 social responsibility, responsible gaming, and inclusion of
28 the statement, “If you or someone you know has a gambling
29 problem and wants help, call 1-800 GAMBLER”, in every
30 designated area approved for interactive wagering and on
31 any mobile application or other digital platform used to
32 place wagers.

33 (2) The commission shall establish minimum internal
34 control standards (MICS) and approve minimum internal
35 control standards proposed by licensed operators for
36 administration of interactive wagering operations,
37 interactive wagering equipment and systems, or other items
38 used to conduct interactive wagering, as well as
39 maintenance of financial records and other required records.

40 (d) The commission shall determine the eligibility of a
41 person to hold or continue to hold a license, shall issue all
42 licenses, and shall maintain a record of all licenses issued
43 under this article. The commission may accept applications,
44 evaluate qualifications of applicants, and undertake initial
45 review of licenses prior to promulgation of emergency rules
46 upon the effective date of this article.

47 (e) The commission shall levy and collect all fees,
48 surcharges, civil penalties, and weekly tax on adjusted gross
49 interactive wagering receipts imposed by this article, and
50 deposit all moneys into the interactive wagering fund,
51 except as otherwise provided under this article.

52 (f) The commission may sue to enforce any provision of
53 this article or any rule of the commission by civil action or
54 petition for injunctive relief.

55 (g) The commission may hold hearings, administer
56 oaths, and issue subpoenas or subpoenas duces tecum:
57 *Provided*, That all hearings shall be conducted pursuant to
58 the provisions of the State Administrative Procedures Act,
59 §29A-2-1 *et seq.* of this code and the Lottery Administrative
60 Appeal Procedures, W.Va. CSR §179-2-1 *et seq.*

61 (h) The commission may exercise any other powers
62 necessary to effectuate the provisions of this article and the
63 rules of the commission.

§29-22E-5. Licenses required.

1 (a) No person may engage in any activity in connection
2 with West Virginia Lottery interactive wagering in this state
3 unless all necessary licenses have been obtained in
4 accordance with this article and rules of the commission.

5 (b) The commission may not grant a license until it
6 determines that each person who has control of the applicant
7 meets all qualifications for licensure. The following persons
8 are considered to have control of an applicant:

9 (1) Each person associated with a corporate applicant,
10 including any corporate holding company, parent company,
11 or subsidiary company of the applicant who has the ability
12 to control the activities of the corporate applicant or elect a
13 majority of the board of directors of that corporation; this
14 does not include any bank or other licensed lending
15 institution which holds a mortgage or other lien acquired in
16 the ordinary course of business;

17 (2) Each person associated with a noncorporate
18 applicant who directly or indirectly holds a beneficial or
19 proprietary interest in the applicant's business operation, or
20 who the commission otherwise determines has the ability to
21 control the applicant; and

22 (3) Key personnel of an applicant, including any
23 executive, employee, or agent, having the power to exercise

24 significant influence over decisions concerning any part of
25 the applicant's business operation.

26 (c) *License application requirements.* — All applicants
27 for any license issued under this article shall submit an
28 application to the commission in the form the commission
29 requires and submit fingerprints for a national criminal
30 records check by the Criminal Identification Bureau of the
31 West Virginia State Police and the Federal Bureau of
32 Investigation. The fingerprints shall be furnished by all
33 persons required to be named in the application and shall be
34 accompanied by a signed authorization for the release of
35 information by the Criminal Investigation Bureau and the
36 Federal Bureau of Investigation. The commission may
37 require additional background checks on licensees when
38 they apply for annual license renewal, and any applicant
39 convicted of any disqualifying offense shall not be licensed.

40 (d) Each interactive wagering licensee, licensed
41 supplier, or a licensed management services provider shall
42 display the license conspicuously in its place of business or
43 have the license available for inspection by any agent of the
44 commission or any law-enforcement agency.

45 (e) Each holder of an occupational license shall carry
46 the license and have some indicia of licensure prominently
47 displayed on his or her person when present in a licensed
48 gaming facility at all times, in accordance with the rules of
49 the commission.

50 (f) Each person licensed under this article shall give the
51 commission written notice within 30 days of any change to
52 any information provided in the licensee's application for a
53 license or renewal.

54 (g) No commission employee may be an applicant for
55 any license issued under this article nor may any employee
56 of any such licensee directly or indirectly hold an ownership
57 or a financial interest in any West Virginia Lottery
58 interactive wagering license.

§29-22E-6. Operator license; West Virginia interactive wagering operators.

1 (a) In addition to the casino games permitted pursuant
2 to the provisions of §29-22A-1 *et seq.*, §29-22C-1 *et seq.*,
3 and §29-25-1 *et seq.* of this code, a licensed gaming facility
4 may operate West Virginia Lottery interactive wagering
5 upon the approval of the commission, and the commission
6 shall have the general responsibility for the implementation
7 of this article and all other duties specified in §29-22-1 *et*
8 *seq.*, §29-22A-1 *et seq.*, §29-22C-1 *et seq.*, §29-22D-1 *et*
9 *seq.*, and §29-25-1 *et seq.* of this code, the provisions of this
10 article, and applicable rules.

11 (b) All interactive wagering authorized by this article
12 shall be West Virginia Lottery games owned by the State of
13 West Virginia. An operator license granted by the
14 commission pursuant to this article grants licensees lawful
15 authority to conduct West Virginia Lottery interactive
16 wagering within the terms and conditions of the license and
17 any rules promulgated under this article.

18 (c) *Interactive wagering licenses.* — The commission
19 may issue up to five licenses to operate West Virginia
20 Lottery interactive wagering in accordance with the
21 provisions of this article. No more than five licenses to
22 operate a gaming facility with West Virginia Lottery
23 interactive wagering shall be permitted in this state.

24 (d) *Grant of license.* — Upon application by a gaming
25 facility and payment of a \$250,000 application fee, the
26 commission shall immediately grant a West Virginia
27 Lottery interactive wagering license to an operator that
28 provides for the right to conduct West Virginia Lottery
29 interactive wagering: *Provided*, That the applicant must
30 hold a valid racetrack video lottery license issued by the
31 commission, pursuant to §29-22A-1 *et seq.* of this code, or
32 a valid license to operate a gaming facility, issued by the
33 commission pursuant to §29-25-1 *et seq.* of this code, and
34 otherwise meet the requirements for licensure under the

35 provisions of this article and the rules of the commission.
36 This license shall be issued for a five-year period, and may
37 be renewed for five-year periods upon payment of a
38 \$100,000 renewal fee, as long as an operator continues to
39 meet all qualification requirements.

40 (e) *Location.* — A West Virginia Lottery interactive
41 wagering license authorizes the operation of West Virginia
42 Lottery interactive wagering at approved locations and
43 through any mobile application or other digital platforms
44 approved by the commission.

45 (f) *Management service contracts.* —

46 (1) *Approval.* — A West Virginia Lottery interactive
47 wagering licensee may not enter into any management
48 services contract that would permit any person other than
49 the licensee to act as the commission's agent in operating
50 West Virginia Lottery interactive wagering unless the
51 management service contract: (A) Is with a person licensed
52 under this article to provide management services; (B) is in
53 writing; and (C) has been approved by the commission.

54 (2) *Material change.* — The West Virginia Lottery
55 interactive wagering licensee shall submit any material
56 change in a management services contract, previously
57 approved by the commission, to the commission for its
58 approval or rejection before the material change may take
59 effect.

60 (3) *Other commission approvals and licenses.* — The
61 duties and responsibilities of a management services
62 provider under a management services contract may not be
63 assigned, delegated, subcontracted, or transferred to a third
64 party without the prior approval of the commission. Third
65 parties must be licensed as a management services provider
66 under this article before providing services.

67 (g) *Expiration date and renewal.* —

68 (1) A licensed operator shall submit to the commission
69 such documentation or information as the commission may
70 require demonstrating to the satisfaction of the director that
71 the licensee continues to meet the requirements of the law
72 and rules. Required documentation or information shall be
73 submitted no later than five years after issuance of an
74 operator license and every five years thereafter, or within
75 lesser periods based on circumstances specified by the
76 commission.

77 (2) If the licensee fails to apply to renew its license
78 issued pursuant to §29-22A-1 *et seq.* or §29-25-1 *et seq.* of
79 this code prior to expiration, the commission shall renew its
80 license under this article at the time the expired license is
81 renewed as long as the licensee was operating in compliance
82 with applicable requirements in the preceding license year.

83 (h) *Surety bond.* — A West Virginia Lottery interactive
84 wagering licensee shall execute a surety bond in an amount
85 and in the form approved by the commission, to be given to
86 the state, to guarantee the licensee faithfully makes all
87 payments in accordance with the provisions of this article
88 and rules promulgated by the commission.

89 (i) *Audits.* — Upon application for a license and
90 annually thereafter, a West Virginia Lottery interactive
91 wagering licensee shall submit to the commission an annual
92 audit of the financial transactions and condition of the
93 licensee's total operations prepared by a certified public
94 accountant in accordance with generally accepted
95 accounting principles and applicable federal and state laws.

96 (j) *Commission office space.* — A West Virginia Lottery
97 interactive wagering licensee shall provide suitable office
98 space at the interactive wagering facility, at no cost, for the
99 commission to perform the duties required of it by this
100 article and the rules of the commission.

101 (k) *Facility qualifications.* — A West Virginia Lottery
102 interactive wagering licensee shall demonstrate that its

103 gaming facility with West Virginia Lottery interactive
104 wagering will: (1) Be accessible to disabled individuals, in
105 accordance with applicable federal and state laws; (2) be
106 licensed in accordance with this article, and all other
107 applicable federal, state, and local laws; and (3) meet any
108 other qualifications specified in rules adopted by the
109 commission. Notwithstanding any provision of this code or
110 any rules promulgated by the Alcohol Beverage Control
111 Commissioner to the contrary, vacation of the premises after
112 service of beverages ceases is not required for any licensed
113 gaming facility.

§29-22E-7. Management services providers; license requirements.

1 (a) *License.* — The holder of a license to operate West
2 Virginia Lottery interactive wagering may contract with an
3 entity to conduct that operation in accordance with the rules
4 of the commission. That entity shall obtain a license as a
5 management services provider prior to the execution of any
6 such contract, and such license shall be issued pursuant to
7 the provisions of this article and any rules promulgated by
8 the commission.

9 (b) *License qualifications and fee.* — Each applicant for
10 a management services provider license shall meet all
11 requirements for licensure and pay a nonrefundable license
12 and application fee of \$100,000. The commission may
13 adopt rules establishing additional requirements for an
14 authorized management services provider. The commission
15 may accept licensing by another jurisdiction, that it
16 specifically determines to have similar licensing
17 requirements, as evidence the applicant meets authorized
18 management services provider licensing requirements.

19 (c) *Renewal.* — Management services provider licenses
20 shall be renewed annually to any licensee who continues to
21 be in compliance with all requirements and who pays the
22 annual renewal fee of \$100,000.

23 (d) Any entity or individual who shares in revenue,
24 including any affiliate operating under a revenue share
25 agreement, shall be licensed under this section.

§29-22E-8. Suppliers; license requirements.

1 (a) *Supplier license.* —

2 (1) The commission may issue a supplier license to a
3 person to sell or lease interactive wagering equipment,
4 systems, or other gaming items necessary to conduct
5 interactive wagering, and offer services related to such
6 equipment or other gaming items to a West Virginia Lottery
7 interactive wagering licensee while the license is active. The
8 commission may establish the conditions under which the
9 commission may issue provisional licenses, pending
10 completion of final action on an application.

11 (2) The commission may adopt rules establishing
12 additional requirements for a West Virginia Lottery
13 interactive wagering supplier and any system or other
14 equipment utilized for wagering. The commission may
15 accept licensing by another jurisdiction, that it specifically
16 determines to have similar licensing requirements, as
17 evidence the applicant meets West Virginia Lottery
18 interactive wagering supplier licensing requirements.

19 (b) *Supplier specifications.* — An applicant for a
20 supplier license shall demonstrate that the equipment,
21 system, or services that the applicant plans to offer to the
22 interactive wagering licensee conform to standards
23 established by the commission and applicable state law. The
24 commission may accept approval by another jurisdiction,
25 that it specifically determines have similar equipment
26 standards, as evidence the applicant meets the standards
27 established by the commission and applicable state law.

28 (c) *License application and renewal fees.* — Applicants
29 shall pay to the commission a nonrefundable license and
30 application fee in the amount of \$10,000. After the initial
31 one-year term, the commission shall renew supplier licenses

32 annually thereafter. Renewal of a supplier license will be
33 granted to any renewal applicant who has continued to
34 comply with all applicable statutory and regulatory
35 requirements, upon submission of the commission issued
36 renewal form and payment of a \$10,000 renewal fee.

37 (d) *Inventory*. — A licensed interactive wagering
38 supplier shall submit to the commission a list of all
39 interactive wagering equipment and services sold, delivered
40 to, or offered to a West Virginia Lottery interactive
41 wagering licensee in this state, as required by the
42 commission, all of which must be tested and approved by
43 an independent testing laboratory approved by the
44 commission. An interactive wagering licensee may continue
45 to use supplies acquired from a licensed interactive
46 wagering supplier, even if a supplier's license expires or is
47 otherwise cancelled, unless the commission finds a defect in
48 the supplies.

§29-22E-9. Occupational licenses.

1 (a) All persons employed to be engaged directly in
2 interactive wagering-related activities, or otherwise
3 conducting or operating interactive wagering, shall be
4 licensed by the commission and maintain a valid
5 occupational license at all times and the commission shall
6 issue such license to be employed in the operation of
7 interactive wagering to a person who meets the
8 requirements of this section.

9 (b) An occupational license to be employed by a gaming
10 facility with West Virginia Lottery interactive wagering
11 permits the licensee to be employed in the capacity
12 designated by the commission while the license is still
13 active. The commission may establish, by rule, job
14 classifications with different requirements to recognize the
15 extent to which a particular job has the ability to impact the
16 proper operation of West Virginia Lottery interactive
17 wagering.

18 (c) *Application and fee.* — Applicants shall submit any
19 required application forms established by the commission
20 and pay a nonrefundable application fee of \$100. The fee
21 may be paid on behalf of an applicant by the employer.

22 (d) *Renewal fee and form.* — Each licensed employee
23 shall pay to the commission an annual license fee of \$100
24 by June 30 of each year. The fee may be paid on behalf of
25 the licensed employee by the employer. In addition to a
26 renewal fee, each licensed employee shall annually submit
27 a renewal application on the form required by the
28 commission.

§29-22E-10. License prohibitions.

1 (a) The commission may not grant any license, pursuant
2 to the provisions of this article, if evidence satisfactory to
3 the commission exists that the applicant:

4 (1) Has knowingly made a false statement of a material
5 fact to the commission;

6 (2) Has been suspended from operating a gambling
7 game, gaming device, or gaming operation, or had a license
8 revoked by any governmental authority responsible for
9 regulation of gaming activities;

10 (3) Has been convicted of a gambling-related offense, a
11 theft or fraud offense, or has otherwise demonstrated, either
12 by a police record or other satisfactory evidence, a lack of
13 respect for law and order; or

14 (4) Is a company or individual who has been directly
15 employed by any illegal or offshore book that serviced the
16 United States, or otherwise accepted black market wagers
17 from individuals located in the United States.

18 (b) The commission may deny a license to any
19 applicant, reprimand any licensee, or suspend or revoke a
20 license:

21 (1) If the applicant or licensee has not demonstrated to
22 the satisfaction of the commission financial responsibility
23 sufficient to adequately meet the requirements of the
24 proposed enterprise;

25 (2) If the applicant or licensee is not the true owner of
26 the business or is not the sole owner and has not disclosed
27 the existence or identity of other persons who have an
28 ownership interest in the business; or

29 (3) If the applicant or licensee is a corporation which
30 sells more than five percent of a licensee's voting stock, or
31 more than five percent of the voting stock of a corporation
32 which controls the licensee, or sells a licensee's assets, other
33 than those bought and sold in the ordinary course of
34 business, or any interest in the assets, to any person not
35 already determined by the commission to have met the
36 qualifications of a licensee under this article.

37 (c) In the case of an applicant for an interactive
38 wagering license, the commission may deny a license to any
39 applicant, reprimand any licensee, or suspend or revoke a
40 license if an applicant has not met the requirements of this
41 section or any other provision of this article.

§29-22E-11. Interactive wagering house rules; posting of rules.

1 (a) Each operator shall adopt comprehensive house rules
2 for game play governing interactive wagering transactions
3 with its patrons. These comprehensive rules will be
4 published as part of the minimum internal control standards.
5 The rules shall specify the amounts to be paid on winning
6 wagers and the effect of schedule changes. House rules shall
7 be approved by the commission prior to implementation.

8 (b) The house rules, together with any other information
9 the commission deems appropriate, shall be conspicuously
10 displayed and included in the terms and conditions of the
11 interactive wagering system. Copies shall be made readily
12 available to patrons.

13 (c) The commission shall license and require the display
14 of West Virginia Lottery game logos on interactive
15 wagering platforms and any locations the commission
16 considers appropriate.

**§29-22E-12. Operator duties; interactive wagering operations
at a licensed gaming facility.**

1 (a) *General.* — All operators licensed under this article
2 to conduct West Virginia Lottery interactive wagering shall:

3 (1) Employ an interactive gaming system and
4 interactive gaming platform which manages, conducts, and
5 records interactive games and the wagers associated with
6 interactive games, as well as any interactive gaming
7 platforms authorized by the commission. System
8 requirements and specifications shall be developed
9 according to industry standards and implemented by the
10 commission as part of the minimum internal control
11 standards;

12 (2) Promptly report to the commission any facts or
13 circumstances related to the operation of a West Virginia
14 Lottery interactive wagering licensee which constitute a
15 violation of state or federal law and immediately report any
16 suspicious betting over a threshold set by the operator that
17 has been approved by the commission to the appropriate
18 state or federal authorities;

19 (3) Conduct all interactive wagering activities and
20 functions in a manner which does not pose a threat to the
21 public health, safety, or welfare of the citizens of this state
22 and does not adversely affect the security or integrity of the
23 West Virginia Lottery;

24 (4) Hold the commission and this state harmless from
25 and defend and pay for the defense of any and all claims
26 which may be asserted against a licensee, the commission,
27 the state, or employees thereof, arising from the licensee's
28 actions or omission while acting as an agent of the

29 commission operating West Virginia Lottery interactive
30 wagering pursuant to this article;

31 (5) Assist the commission in maximizing interactive
32 wagering revenues; and

33 (6) Keep current in all payments and obligations to the
34 commission.

35 (b) *Duties.* — All West Virginia Lottery interactive
36 wagering licensees shall:

37 (1) Acquire West Virginia Lottery interactive wagering
38 equipment by purchase, lease, or other assignment and
39 provide a secure location for the placement, operation, and
40 play of interactive wagering gaming equipment;

41 (2) Prevent any person from tampering with or
42 interfering with the operation of any West Virginia Lottery
43 interactive wagering;

44 (3) Ensure that West Virginia Lottery interactive
45 wagering conducted at a gaming facility is within the sight
46 and control of designated employees of the licensee and
47 such wagering at the facility or otherwise available by the
48 licensee is conducted under continuous observation by
49 security equipment in conformity with specifications and
50 requirements of the commission;

51 (4) Ensure that West Virginia Lottery interactive
52 wagering occurs only in the specific locations within
53 designated gaming areas approved by the commission or
54 using a commission approved mobile application or other
55 digital platform that utilizes communications technology to
56 accept wagers originating within this state, or on an
57 interactive wagering device. West Virginia Lottery
58 interactive wagering shall only be relocated or offered in
59 additional authorized manners in accordance with the rules
60 of the commission;

61 (5) Maintain sufficient cash and other supplies to
62 conduct interactive wagering at all times; and

63 (6) Maintain daily records showing the gross interactive
64 wagering receipts and adjusted gross interactive wagering
65 receipts of the licensee from West Virginia Lottery
66 interactive wagering and shall timely file with the
67 commission any additional reports required by rule or by
68 other provisions of this code.

§29-22E-13. Posting of betting limits.

1 An interactive wagering licensee shall conspicuously
2 post a sign at each West Virginia Lottery interactive
3 wagering location and on all interactive gaming platforms
4 indicating the minimum and maximum wagers permitted at
5 that location and shall comply with the same.

§29-22E-14. Interactive wagering agreements with other governments.

1 (a) On behalf of the State of West Virginia, the
2 commission is authorized to:

3 (1) Enter into interactive wagering agreements with
4 other governments whereby persons who are physically
5 located in a signatory jurisdiction may participate in
6 interactive wagering conducted by one or more operators
7 licensed by the signatory governments; and

8 (2) Take all necessary actions to ensure that any
9 interactive wagering agreement entered into, pursuant to
10 this section, becomes effective.

11 (b) The rules adopted by the commission pursuant to
12 this section may include provisions prescribing:

13 (1) The form, length, and terms of an agreement entered
14 into by the commission and another government, including,
15 but not limited to, provisions relating to how: Taxes are to
16 be treated by this state and another government; revenues

17 are to be shared and distributed; and disputes with patrons
18 are to be resolved;

19 (2) The information to be furnished to the commission
20 by a government that proposes to enter into an agreement
21 with this state pursuant to this section;

22 (3) The information to be furnished to the commission
23 to enable the commission and director to carry out the
24 purposes of this section;

25 (4) The manner and procedure for hearings conducted
26 by the commission pursuant to this section, including any
27 special rules or notices; and

28 (5) The information required to be furnished to the
29 commission to support any recommendations made to the
30 commission, pursuant to this section.

31 (c) The commission may not enter into any interactive
32 wagering agreement, pursuant to this section, unless the
33 agreement includes provisions that:

34 (1) Account for the sharing of revenues by this state and
35 another government;

36 (2) Permit the effective regulation of interactive
37 wagering by this state, including provisions relating to
38 licensing of persons, technical standards, resolution of
39 disputes by patrons, requirements for bankrolls,
40 enforcement, accounting, and maintenance of records;

41 (3) Require each government that is a signatory to the
42 agreement to prohibit operators of interactive wagering,
43 management or other service providers, or suppliers,
44 manufacturers or distributors of interactive wagering
45 systems from engaging in any activity permitted by the
46 interactive wagering agreement unless they are licensed in
47 this state or in a signatory jurisdiction with similar
48 requirements approved by the commission;

49 (4) No variation from the requirements of the interactive
50 wagering agreement is permitted for any signatory
51 government without a lack of opposition by this state and
52 all signatory governments;

53 (5) Prohibit any subordinate or side agreements among
54 any subset of governments that are signatories to the
55 agreement unless it relates exclusively to the sharing of
56 revenues; and

57 (6) Require the government to establish and maintain
58 regulatory requirements governing interactive wagering
59 that are consistent with the requirements of this state in all
60 material respects if the interactive wagering agreement
61 allows persons physically located in this state to participate
62 in interactive wagering conducted by another government
63 or an operator licensed by another government.

§29-22E-15. Authorization of interactive wagering in this state; requirements.

1 (a) An operator shall accept wagers on interactive
2 games authorized under this article from persons physically
3 present in a licensed gaming facility where authorized
4 interactive wagering occurs. A person placing a wager shall
5 be at least 21 years of age.

6 (b) An operator may accept wagers from an individual
7 physically located within this state using a mobile or other
8 digital platform or an interactive wagering device, approved
9 by the commission, through the patron's interactive
10 wagering account. A person placing a wager shall be at least
11 21 years of age.

12 (c) An operator may accept wagers from an individual
13 physically located in a state or jurisdiction with which the
14 commission has entered into an interactive wagering
15 agreement using a mobile or other digital platform or an
16 interactive wagering device through the patron's interactive
17 wagering account, so long as the device or platform is

18 approved by the commission and all other requirements of
19 the agreement are satisfied.

20 (d) The commission or operator may ban any person
21 from entering a gaming area of a gaming facility
22 conducting interactive wagering or the grounds of a
23 gaming facility licensed under this article or from
24 participating in the play or operation of any West
25 Virginia Lottery interactive wagering. A log of all
26 excluded players shall be kept by the commission and
27 each licensee, and no player on the commission's
28 exclusion list or the licensed operator's exclusion list
29 shall wager on any West Virginia Lottery interactive
30 wagering under this article.

31 (e) The commission shall promulgate rules
32 implementing the provisions of §29-22E-15(a) and §29-
33 22E-15(b) of this code by interpretive rule and minimum
34 internal control standards.

35 (f) The commission shall conduct all interactive
36 wagering pursuant to the provisions of this article, and such
37 gaming activities shall be deemed to occur at the licensed
38 gaming facilities authorized to conduct interactive
39 wagering.

40 (g) No licensed gaming facility employee may place a
41 wager on any interactive wagering at the employer's facility
42 or through any other mobile application or digital platform
43 of their employer.

44 (h) No commission employee may knowingly wager
45 or be paid any prize from any wager placed at any
46 licensed gaming facility with West Virginia Lottery
47 interactive wagering within this state or at any facility
48 outside this jurisdiction that is directly or indirectly
49 owned or operated by a West Virginia interactive
50 wagering licensee.

§29-22E-16. Interactive wagering revenues; accounting for the state's share of revenue imposed for the privilege of offering West Virginia Lottery interactive wagering; limitation of other taxes; recoupment for improvements.

1 (a) *Imposition and rate of assessment.* — For the
2 privilege of holding a license to operate interactive
3 wagering under this article, the state shall impose and
4 collect 15 percent of the licensee's adjusted gross
5 interactive wagering receipts from the operation of West
6 Virginia Lottery interactive wagering (hereinafter
7 "privilege tax" or "tax"). The accrual method of accounting
8 shall be used for purposes of calculating the amount of the
9 tax owed by the licensee.

10 (b) *Operator revenue reports and payment of privilege*
11 *tax.* —

12 (1) The tax levied and collected pursuant to §29-22E-
13 16(a) of this code is due and payable to the commission in
14 weekly installments on or before the Wednesday following
15 the calendar week in which the adjusted gross interactive
16 wagering receipts were received and the tax obligation was
17 accrued.

18 (2) The licensed operator shall complete and submit the
19 return for the preceding week by electronic communication
20 to the commission, on or before Wednesday of each week,
21 in the form prescribed by the commission that provides:

22 (A) The total gross interactive wagering receipts and
23 adjusted gross interactive wagering receipts from operation
24 of West Virginia Lottery interactive wagering during that
25 week;

26 (B) The tax amount for which the interactive wagering
27 licensee is liable; and

28 (C) Any additional information necessary in the
29 computation and collection of the tax on adjusted gross
30 interactive wagering receipts required by the commission.

31 (3) The tax amount shown to be due shall be remitted by
32 electronic funds transfer simultaneously with the filing of
33 the return. All moneys received by the commission pursuant
34 to this section shall be deposited in the interactive wagering
35 fund in accordance with the provisions of this article.

36 (c) *Privilege tax obligation imposed by this section is in*
37 *lieu of other taxes.* — With the exception of the ad valorem
38 property tax collected under chapter 11A of this code, the
39 privilege tax on adjusted gross interactive wagering receipts
40 imposed by this section is in lieu of all other state and local
41 taxes and fees imposed on the operation of, or the proceeds
42 from operation of, West Virginia Lottery interactive
43 wagering, except as otherwise provided in this section. The
44 consumers sales and services tax imposed pursuant to §11-
45 15-1 *et seq.* of this code, the use tax imposed by §11-15A-1
46 *et seq.* of this code and any similar local tax imposed at the
47 municipal or county level, shall not apply to the licensee's
48 gross receipts from any West Virginia Lottery interactive
49 wagering or to the licensee's purchase of interactive
50 wagering equipment, supplies, or services directly used in
51 operation of the interactive wagering authorized by this
52 article.

53 (d) Acquisition of any system or wagering equipment
54 and other items related to the operation of West Virginia
55 interactive wagering shall be considered "facility
56 modernization improvements" eligible for recoupment as
57 defined in §29-22A-10(b)(2) and §29-25-22(c) of this code.

58 (e) *Prohibition on credits.* — Notwithstanding any other
59 provision of this code to the contrary, no credit may be
60 allowed against the privilege tax obligation imposed by this
61 section or against any other tax imposed by any other
62 provision of this code for any investment in gaming
63 equipment or for any investment in or improvement to real
64 property that is used in the operation of West Virginia
65 Lottery interactive wagering.

§29-22E-17. West Virginia Lottery Interactive Wagering Fund; distribution of funds.

1 (a) The special fund in the State Treasury known as the
2 West Virginia Lottery Interactive Wagering Fund is hereby
3 created and all moneys collected under this article by the
4 commission shall be deposited with the State Treasurer to
5 the West Virginia Lottery Interactive Wagering Fund. The
6 fund shall be an interest-bearing account with all interest or
7 other return earned on the money of the fund credited to and
8 deposited in the fund. All expenses of the commission
9 incurred in the administration and enforcement of this
10 article shall be paid from the interactive wagering fund
11 pursuant to §29-22E-17(b) of this code.

12 (b) The commission shall deduct an amount sufficient
13 to reimburse its actual costs and expenses incurred in
14 administering interactive wagering at licensed gaming
15 facilities from the gross deposits into the interactive
16 wagering fund. The amount remaining after the deduction
17 for administrative expenses is the net profit.

18 (1) *Administrative allowance.* — The commission shall
19 retain up to 15 percent of gross deposits for the fund
20 operation and its administrative expenses: *Provided*, That in
21 the event that the percentage allotted for operations and
22 administration generates a surplus, the surplus shall be
23 allowed to accumulate but may not exceed \$250,000. On a
24 monthly basis, the director shall report any surplus in excess
25 of \$250,000 to the Joint Committee on Government and
26 Finance and remit the entire amount of those surplus funds
27 in excess of \$250,000 to the State Treasurer which shall be
28 allocated as net profit.

29 (2) *Distribution to pension plan for racing association*
30 *employees.* — In each fiscal year, the Lottery Commission
31 shall deposit one-quarter of a percent of the net profit into
32 each of the four special funds established by the Racing
33 Commission, pursuant to §29-22A-10 and §29-22C-27 of
34 this code, to be used for payment into the pension plan for

35 the employees of the licensed racing associations in this
36 state.

37 (3) *Distribution of net profit.* — In each fiscal year,
38 remaining net profit shall be deposited into the State Lottery
39 Fund created by §29-22-18 of this code unless otherwise
40 required by this code.

§29-22E-18. Law enforcement.

1 Notwithstanding any provision of this code to the
2 contrary, the commission shall, by contract or cooperative
3 agreement with the West Virginia State Police, arrange for
4 those law-enforcement services uniquely related to
5 interactive wagering, as such occurs at facilities of the type
6 authorized by this article, that are necessary to enforce the
7 provisions of this article that are not subject to federal
8 jurisdiction: *Provided*, That the State Police shall only have
9 exclusive jurisdiction over offenses committed on the
10 grounds of a licensed gaming facility that are offenses
11 relating to interactive wagering.

§29-22E-19. Civil penalties.

1 (a) The commission may impose, on any person who
2 violates the provisions of this article, a civil penalty not to
3 exceed \$50,000 for each violation. Such penalty shall be
4 imposed on all individuals and is not limited to individuals
5 licensed under this article.

6 (b) The provisions of §29A-5-1 *et seq.* of this code apply
7 to any civil penalty imposed pursuant to the provisions of
8 this section.

**§29-22E-20. Crimes and penalties related to unauthorized
interactive wagering operations.**

1 (a) Any person, other than a licensee under this article,
2 who engages in accepting, facilitating, or operating an
3 interactive wagering operation is guilty of a misdemeanor
4 and, upon conviction thereof, shall be fined not more than

5 \$10,000 or confined in jail for not more than 90 days, or
6 both fined and confined.

7 (b) Notwithstanding the penalty provisions of §29-22E-
8 20(a) of this code, any person convicted of a second
9 violation of §29-22E-20(a) of this code is guilty of a
10 misdemeanor and, upon conviction thereof, shall be fined
11 not more than \$50,000, or confined in jail for not more than
12 six months, or both fined and confined.

13 (c) Notwithstanding the penalty provisions of §29-22E-
14 20(a) or §29-22E-20(b) of this code, any person convicted
15 of a third or subsequent violation of §29-22E-20(a) of this
16 code is guilty of a felony, and upon conviction thereof, shall
17 be fined not less than \$25,000 nor more than \$100,000 or
18 imprisoned in a state correctional facility for not less than
19 one year nor more than five years, or both fined and
20 confined.

**§29-22E-21. Crimes and penalties related to authorized
interactive wagering operation.**

1 (a) An interactive wagering licensee is guilty of
2 unlawful operation and is guilty of a misdemeanor when:

3 (1) The licensee operates West Virginia Lottery
4 interactive wagering without authority of the commission to
5 do so;

6 (2) The licensee operates West Virginia Lottery
7 interactive wagering in any location or by any manner that
8 is not approved by the commission;

9 (3) The licensee knowingly conducts, carries on,
10 operates, or allows any interactive wagering to occur on
11 premises or through any other device if equipment or
12 material has been tampered with, or exposed to conditions
13 in which it will be operated in a manner designed to deceive
14 the public;

15 (4) The licensee employs an individual who does not
16 hold a valid occupational license in a position for which a
17 license is required or otherwise allows an individual to
18 perform duties for which such license is required or
19 continues to employ an individual after the employee's
20 occupational license is no longer valid;

21 (5) The licensee acts or employs another person to act
22 as if he or she is not an agent or employee of the licensee in
23 order to encourage participation in West Virginia Lottery
24 interactive wagering;

25 (6) The licensee knowingly permits an individual under
26 the age of 21 to enter or remain in a designated gaming area
27 or to engage in interactive wagering; or

28 (7) The licensee exchanges tokens, chips, electronic
29 media, or other forms of credit used for wagering for
30 anything of value except money or credits applied to an
31 interactive wagering account at a gaming facility or through
32 a digital or electronic platform authorized under this article.

33 (b) A person is guilty of a felony when:

34 (1) A person changes or alters the normal outcome of
35 any game played on a mobile or other digital platform,
36 including any interactive gaming system used to monitor the
37 same or the way in which the outcome is reported to any
38 participant in the game;

39 (2) The person manufactures, sells, or distributes any
40 device that is intended by that person to be used to violate
41 any provision of this article or the interactive wagering laws
42 of any other state;

43 (3) The person claims, collects, or takes anything of
44 value from a gaming facility offering West Virginia Lottery
45 interactive wagering with intent to defraud or attempts such
46 action without having made a wager in which such amount
47 or value is legitimately won or owed;

48 (4) The person knowingly places a wager using
49 counterfeit currency or other counterfeit form of credit for
50 wagering at a gaming facility or through a digital or
51 electronic platform offering West Virginia Lottery
52 interactive wagering; or

53 (5) The person, not a licensed gaming facility under this
54 article or an employee or agent of a gaming facility licensed
55 under this article acting in furtherance of the licensee's
56 interest, has in his or her possession on grounds owned by
57 the gaming facility licensed under this article or on grounds
58 contiguous to the licensed gaming facility, any device
59 intended to be used to violate a provision of this article or
60 any rule of the commission.

61 (c) Any person who violates any provision of §29-22E-
62 21(a) of this code is guilty of a misdemeanor and, upon
63 conviction thereof, shall be fined not more than \$1,000 or
64 confined in jail for not more than six months, or both fined
65 and confined, except any violation that is not committed by
66 a natural person may result in a fine of not more than
67 \$25,000.

68 (d) Any person who violates any provision of §29-22E-
69 21(b) of this code is guilty of a felony and, upon conviction
70 thereof, shall be fined not less than \$5,000 nor more than
71 \$10,000, or confined in a state correctional facility for not
72 less than one year nor more than five years, or both fined
73 and confined.

74 (e) With regard to §29-22E-21(b) of this code, each
75 West Virginia interactive wagering licensee shall post
76 notice of the prohibitions and penalties of this section in a
77 manner determined by the rules of the commission.

§29-22E-22. Preemption.

1 No local law or rule providing any penalty, disability,
2 restriction, regulation, or prohibition for operating a gaming
3 facility with West Virginia Lottery interactive wagering or
4 supplying a licensed gaming facility may be enacted, and

5 the provisions of this article preempt all regulations, rules,
6 ordinances, and laws of any county or municipality in
7 conflict with this article.

§29-22E-23. Exemption from federal law.

1 Pursuant to Section 2 of Chapter 1194, 64 Stat. 1134, 15
2 U.S.C. §1172, approved January 2, 1951, the State of West
3 Virginia, acting by and through duly elected and qualified
4 members of the Legislature, does declare and proclaim that
5 the state is exempt from Chapter 1194, 64 Stat. 1134, 15
6 U.S.C. §1171 to §1178.

§29-22E-24. Shipment of gambling devices.

1 All shipments of gambling devices including any
2 interactive wagering devices or related materials to licensed
3 gaming facilities in this state are legal shipments of
4 gambling devices into the State of West Virginia, as long as
5 the registering, recording, and labeling of which have been
6 completed by the supplier thereof in accordance with
7 Chapter 1194, 64 Stat. 1134, 15 U.S.C. §1171 to §1178.

CHAPTER 129

**(H. B. 2958 - By Delegates Maynard, Westfall,
Jennings, Pack, Paynter, Miller, Lovejoy, Linville, J.
Jeffries and Angelucci)**

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-15-7a relating to authorizing the State Auditor to conduct regular financial examinations or audits of all volunteer fire companies; authorizing the Auditor to establish a schedule of examinations; and defining the scope of the Auditor's examinations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-7a. Audit or financial examination of volunteer fire companies.

1 The Auditor shall have the authority and the duty to
2 make a regular review of the finances of each volunteer fire
3 company constituted under the provisions of this article.
4 Audits or financial examinations are not required to be
5 conducted on an annual basis, but shall be scheduled as to
6 complete a review of each volunteer fire company at least
7 once every five years: *Provided*, That nothing in this section
8 shall prevent the Auditor from conducting more than one
9 financial examination or audit of a volunteer fire company
10 within the five-year period if the Auditor has cause to
11 believe that loss, mismanagement, misuse, or waste of the
12 funds of the company that may occur or is occurring. The
13 scope of the Auditor's examination or audit shall include all
14 income of the voluntary fire company, regardless of the
15 source of funds, the assets, liabilities, and all expenditures
16 of the company: *Provided, however*, That the State Auditor
17 shall implement internal policies to ensure that any costs
18 associated with an audit under this section of the code may
19 be carried by the State Auditor or may be recouped by the
20 volunteer fire company.

●

CHAPTER 130

**(Com. Sub. for H. B. 3016 - By Delegates Butler and
Porterfield)
[By Request of the Department of Transportation]**

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to repeal §29-2A-9, §29-2A-17, §29-2A-18, §29-2A-19, §29-2A-21, §29-2A-22, §29-2A-23, §29-2A-24, §29-2A-25, §29-2A-26, §29-2A-27 and §29-2A-28 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-2A-1, §29-2A-2, §29-2A-3, §29-2A-4, §29-2A-5, §29-2A-6, §29-2A-7, §29-2A-11, §29-2A-14 and §29-2A-20 of said code, all relating to the State Aeronautics Commission; repealing provisions relating to state airways systems, investigations, inquiries and hearings, disposition of fees, joint hearings, cooperation with and reports to agencies of state the United States, the use of state and municipal facilities and services, commission orders, notices and opportunity for hearings, judicial review of commission actions, criminal penalties and exchange of information for violations of provisions of article, severability, repeal of inconsistent provisions, and short title; removing antiquated and inoperable provisions modifying and deleting definitions; continuing the State Aeronautics Commission; modifying and updating membership requirements, powers, and duties of the commission; setting forth quorum and meeting requirements; providing for the organization and operation of the commission; modifying provisions related to the director of the commission; updating provisions related to funding and federal aid; continuing general powers related to planning, establishing, constructing, maintaining, and operating of airports; removing requirement

for delivery of abstract of conviction to commission; and clarifying authority to require presentment of certificate, permit, rating or license and to enforce aeronautics laws.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. STATE AERONAUTICS COMMISSION.

§29-2A-1. Definitions.

1 As used in the statutes of West Virginia, unless the
2 context otherwise requires:

3 “Aeronautics” means the art and science of flight,
4 including, but not limited to, transportation by aircraft;
5 the operation, construction, repair, or maintenance of
6 aircraft, aircraft power plants and accessories, including
7 the repair, packing, and maintenance of parachutes; the
8 design, establishment, construction, extension, operation,
9 improvement, repair, or maintenance of airports or other
10 air navigation facilities; and education about aeronautics.

11 “Aircraft” means any contrivance now known, or
12 hereafter invented, used or designed for navigation of or
13 flight in the air.

14 “Air navigation” or “navigation” means the operation or
15 navigation of aircraft in the air space over this state, or upon
16 any airport within this state.

17 “Air navigation facility” means any facility other than
18 one owned or controlled by the federal government used in,
19 available for use in, or designed for use in aid of air
20 navigation, including airports, and any structures,
21 mechanisms, lights, beacons, markers, communications
22 system or other instrumentalities or devices used or useful
23 as an aid or constituting an advantage or convenience to the
24 safe taking off, navigation, and landing of aircraft or the safe
25 and efficient operation or maintenance of an airport, and any
26 combination of any or all of such facilities.

27 “Airport” means any area of land or water which is used,
28 or intended for use, for the landing and takeoff of aircraft
29 and any appurtenant areas which are used, or intended for
30 use, for airport buildings or other airport facilities or rights-
31 of-way, together with all airport buildings and facilities
32 located thereon.

33 “Commission” means the West Virginia State
34 Aeronautics Commission.

35 “Director” means the director of the Commission.

36 “Municipality” means any county, city, town, village, or
37 other political subdivision of this state. “Municipal” means
38 pertaining to a municipality as herein defined.

39 “Operation of aircraft” or “operate aircraft” means the
40 use, navigation, or piloting of aircraft in the airspace over
41 this state or upon the ground within this state.

42 “Person” means any individual, firm, partnership,
43 corporation, company, association, joint stock association,
44 or body politic and includes any trustee, receiver, assignee,
45 or other similar representative thereof.

**§29-2A-2. Short title; continuation of commission;
membership and compensation; quorum.**

1 (a) This article may be cited as the “State Aeronautics
2 Commission Act”.

3 (b) The West Virginia State Aeronautics Commission is
4 hereby continued. The current members shall retain their
5 seats until the expiration of their terms and may be
6 reappointed. The commission consists of five members
7 appointed by the Governor, by and with the advice and
8 consent of the Senate. One member shall be the Secretary of
9 Transportation ex officio, whose term shall continue for the
10 period that he or she holds the office of Secretary of
11 Transportation. The other four members of the commission
12 are initially appointed by the Governor, one to serve for a

13 term of one year, one to serve for a term of two years, one
14 to serve for a term of three years, and one to serve for a term
15 of four years. The successors of the members initially
16 appointed as provided herein shall be appointed for terms of
17 four years each in the same manner as the members
18 originally appointed under this section, except that any
19 person appointed to fill a vacancy occurring prior to the
20 expiration of the term for which his or her predecessor was
21 appointed shall be appointed only for the remainder of such
22 term. Each member shall serve until the appointment and
23 qualification of his or her successor. No more than three
24 members of the commission shall be members of the same
25 political party. All members of the commission shall be
26 citizens and residents of this state. The members of the
27 commission who are appointed by the Governor as provided
28 by this section shall be selected with due regard to their
29 fitness by reason of their aeronautical, legal, administrative,
30 or management knowledge. In making such appointments,
31 the Governor shall, so far as may be possible and
32 practicable, select the several members from different
33 geographical sections of the state.

34 (c) No member may receive any salary for his or her
35 services, but each shall be reimbursed for actual and
36 necessary expenses incurred by such member in the
37 performance of his or her duties in accordance with state
38 travel rules.

39 (d) Three members are a quorum, and a quorum is
40 necessary to conduct business. Members may participate in
41 any meeting by phone.

§29-2A-3. Powers and duties of commission.

1 The commission may enter into any contracts necessary
2 to the execution of the powers granted to it by this article. It
3 is empowered and directed to encourage, foster, and assist
4 in the development of aeronautics in this state and to
5 encourage the establishment of airports and air navigation
6 facilities. It shall cooperate with and assist the federal

7 government, the municipalities of this state, and other
8 persons in the development of aeronautics and shall act to
9 coordinate the aeronautical activities of these bodies and
10 persons. Municipalities are authorized to cooperate with the
11 commission in the development of aeronautics and
12 aeronautics facilities in this state. The commission is hereby
13 given the power and authority to make such rules, policies,
14 and guidelines as it may deem necessary and advisable for
15 the public safety, governing the designing, laying out,
16 locating, building, equipping and operating of all airports
17 and the conduct of all other phases of aeronautics to
18 effectuate the requirements of this article.

19 (1) The commission shall keep on file with the
20 Secretary of State, and at the principal office of the
21 commission, a copy of its rules and orders having general
22 effect for public inspection. It shall provide for the
23 publication and general distribution of all its orders, rules,
24 and other information of public interest. Copies of any such
25 orders, rules, and other information shall be made available
26 electronically and provided to any person interested, free of
27 charge, upon request. The publication and distribution of
28 any such order or rule proposed for legislative approval in
29 accordance with the provisions of §29A-3-1 *et seq.* of this
30 code shall be sufficient notice to the public of the
31 provisions, requirements, and effect thereof.

32 (2) Except where otherwise prohibited, the commission
33 is authorized to permit the West Virginia Board of Treasury
34 Investments or the West Virginia Investment Management
35 Board to invest, as provided by this code, any funds received
36 by the commission pursuant to the provisions of this code.

§29-2A-4. Organization of commission; meetings; reports; offices.

1 (a) The commission shall make, and may from time to
2 time amend, rules for the administration of the powers
3 granted to it by this article. The commission shall organize
4 by electing from among its members a chairperson who
5 shall serve as such for a period of two years. The

6 chairperson is authorized to sign documents, execute
7 contracts, and otherwise act for and in the name of the
8 commission in all matters within the lawful powers of the
9 commission and authorized by a majority of its members.

10 (b) The commission shall determine the number, date,
11 and place of its regular meetings, but at least one meeting
12 shall be held annually at the commission's established
13 offices in the city of Charleston. Whenever the convenience
14 of the public or of interested persons may be promoted, or
15 delay or expense may be prevented, the commission may
16 hold meetings at any other place designated by it.

17 (c) The commission shall report in writing to the
18 Governor on or before August 31 of each year. The report
19 shall contain a summary of the commission's proceedings
20 during the preceding fiscal year, a detailed and itemized
21 statement of all revenue received, and all expenditures made
22 by or on behalf of the commission, such other information
23 which may be necessary or useful, and any additional
24 information which may be requested by the Governor. The
25 fiscal year of the commission shall conform to the fiscal
26 year of the state.

27 (d) An office shall be established and maintained by the
28 commission in the city of Charleston.

§29-2A-5. Director of aeronautics; appointment, qualifications, compensation, powers and duties; staff.

1 (a) A director of aeronautics shall be appointed by the
2 commission, with the advice and consent of the Secretary of
3 Transportation, who shall serve for an indefinite term at the
4 pleasure of the commission. The director shall be appointed
5 with due regard to his or her fitness as an administrator. The
6 director shall devote his or her time to the duties of his or
7 her office as required and prescribed by this article and may
8 not have any pecuniary interest in, or any stock in, or bonds
9 of, any civil aeronautical enterprise. The Secretary of
10 Transportation, in consultation with the commission, shall

11 determine the director's compensation. The compensation
12 shall conform in general to the compensation received by
13 persons occupying positions of similar importance and
14 responsibility with other agencies of this state. The
15 director's compensation may not be paid, in whole or in
16 part, from grant funds received by the commission. The
17 director shall be reimbursed for all traveling and other
18 expenses incurred by him or her in the discharge of his or
19 her official duties in accordance with state travel rules. The
20 director shall be the executive officer of the commission and
21 under its supervision shall administer the provisions of this
22 article and the rules and orders established thereunder and
23 all applicable laws of the state. The director shall attend, but
24 not vote, at all meetings of the commission. The director
25 serves as the secretary of the commission and is in charge
26 of its offices and responsible to the commission for the
27 preparation of reports and the collection and dissemination
28 of data and other public information relating to aeronautics.
29 At the direction of the commission, the director is
30 authorized to execute contracts entered into by the
31 commission which are legally authorized and for which
32 funds are provided in any state or federal appropriations act.

33 (b) The commission may, by written order filed in its
34 office, delegate to the director any of the powers or duties
35 vested or imposed upon it by this article. Any delegated
36 powers and duties may be exercised by the director in the
37 name of the commission. The commission may also employ
38 any necessary administrative, engineering, technical, and
39 clerical staff.

§29-2A-6. State financial assistance for county, municipal, and regional airports.

1 The commission, out of any appropriation made to it by
2 the Legislature or out of any funds at its disposal, may make
3 funds available by grant or otherwise to counties,
4 municipalities, and regional airport authorities, created
5 under the provisions of chapter eight of this code, for the
6 planning, acquisition, construction, improvement,

7 maintenance, or operation of airports owned or operated or
8 to be owned or operated by such counties, municipalities, or
9 regional airport authorities. Acceptance of any moneys so
10 made available to any such county, municipality, or regional
11 airport authority, shall constitute consent by the recipient
12 that a reasonable use of the airport may be made, upon
13 request of the commission, by the United States
14 government, the state, or any of their respective agencies,
15 including the State Aeronautics Commission and the
16 National Guard of West Virginia for state purposes related
17 or incidental to aeronautics.

§29-2A-7. Federal aid.

1 (a) The commission is authorized to accept federal aid
2 either outright or by way of matching funds, in whole or in
3 part, as may be required by the federal government. When
4 matching funds are available to the commission, they may
5 be used in compliance with the provisions of the laws and
6 regulations of the United States for the expenditure of
7 federal moneys for airports and other air navigation
8 facilities.

9 (b) The commission is authorized to accept and receive
10 federal moneys and other moneys, either public or private,
11 for and on behalf of this state, or any municipality thereof,
12 for the planning, acquisition, construction, improvement,
13 maintenance, and operation of airports and other air
14 navigation facilities. The funds may be expended regardless
15 of whether the work is to be done by the state or a
16 municipality, or jointly. If the funds are from the United
17 States, they shall be expended upon such terms and
18 conditions as are or may be prescribed by the laws of the
19 United States and any rules or regulations made thereunder.
20 The commission is hereby designated as the agency of the
21 state, and is authorized to and may act as agent of any
22 municipality of this state upon the request of such
23 municipality, in accepting and receiving moneys on its
24 behalf for airports or other air navigation facility purposes,
25 and in contracting for the planning, acquisition,

26 construction, improvement, maintenance, or operation of
27 airports or other air navigation facilities, financed, either in
28 whole or in part, by federal moneys. A municipality is
29 authorized to and may enter into an agreement with the
30 commission prescribing the terms and conditions of such
31 agency in accordance with federal laws, rules, and
32 regulations and with this article. All moneys paid by the
33 United States government shall be retained by the state or
34 paid to said municipalities under such terms and conditions
35 as may be imposed by the United States government in
36 making such grants.

37 (c) All contracts for the planning, acquisition,
38 construction, improvement, maintenance, and operation of
39 airports, or other air navigation facilities made by the
40 commission, either as the agent of the state or as the agent
41 of any municipality therein, shall be made pursuant to the
42 laws of this state governing the making of like contracts:
43 *Provided*, That where the planning, acquisition,
44 construction, improvement, maintenance, and operation of
45 any airport or other air navigation facility is financed wholly
46 or partially with federal moneys, the commission, as agent
47 of the state or of any municipality thereof, may let contracts
48 in the manner prescribed by the federal authorities, acting
49 under the laws of the United States, and any rules or
50 regulations made thereunder, notwithstanding any other
51 state law to the contrary.

52 (d) All moneys accepted for disbursement by the
53 commission pursuant to this section shall be deposited in the
54 State Treasury, and, unless otherwise prescribed by the
55 authority from which the money is received, kept in separate
56 funds, designated according to the purposes for which the
57 moneys were made available, and held by the state in trust
58 for such purposes. All such moneys are hereby appropriated
59 for the purposes for which they were made available and
60 shall be expended in accordance with federal laws and
61 regulations and this article. The commission is authorized,
62 whether acting for this state or as the agent of any

63 municipality therein, when requested by the United States
64 government or any agency or department thereof, or when
65 requested by the state or municipality for which the money
66 has been made available, to disburse such moneys for the
67 designated purposes, but this shall not preclude any other
68 authorized method of disbursement.

69 (e) The state or any municipality therein is authorized to
70 cooperate with the government of the United States, and any
71 agency or department thereof, in the acquisition,
72 construction, improvement, maintenance, and operation of
73 airports and other air navigation facilities in this state and is
74 authorized to accept federal aid, either by way of outright
75 grant or by matching the funds, in whole or in part, as may
76 be required, and to comply with the provisions of the laws
77 of the United States and any rules or regulations made
78 thereunder for the expenditure of federal moneys upon such
79 airports and other navigation facilities.

§29-2A-8. Establishment and operation of state airports.

1 (a) The commission is authorized on behalf of and in the
2 name of the state, out of appropriations and other moneys
3 made available for such purposes, to plan, establish,
4 construct, maintain, and operate airports and air navigation
5 facilities within the state. For these purposes the
6 commission may, by purchase, gift, devise, lease,
7 condemnation, or otherwise, acquire such property, real or
8 personal, as is necessary to permit safe and efficient
9 operation of the airports and air navigation facilities. In like
10 manner, the commission may acquire existing airports and
11 air navigation facilities: *Provided*, That it shall not acquire
12 or take over any airport or air navigation facility owned or
13 controlled by a municipality of this or any other state
14 without the consent of the municipality. The commission
15 may by sale, lease, or otherwise, dispose of any such
16 property, airport, air navigation facility, or portion thereof
17 or interest therein. Any disposal by lease shall be made
18 pursuant to the terms of §8-28-7 of this code. Any disposal
19 by sale or otherwise shall be in accordance with the laws of

20 this state governing the disposition of other property of the
21 state, except that in the case of disposal to any municipality
22 or state government or the United States for aeronautical
23 purposes incident thereto the sale or other disposal may be
24 effected in such manner and upon such terms as the
25 commission determines are in the best interest of the state.

26 (b) Nothing contained in this article shall be construed
27 to limit any right, power, or authority of the state or a
28 municipality to regulate airport hazards by zoning.

29 (c) The commission may exercise any powers granted
30 by this section jointly with any municipalities or agencies of
31 the state government, with other states or their
32 municipalities, or with the United States.

33 (d) In the condemnation of property authorized by this
34 section, the commission shall proceed in the name of the
35 state in the manner provided by §54-1-1, *et seq.* of this code.

§29-2A-11. Operation of aircraft while under influence of alcohol, controlled substances or drugs; criminal penalties.

1 (a) Any person who:

2 (1) Operates an aircraft in this state while:

3 (A) He or she is under the influence of alcohol; or

4 (B) He or she is under the influence of any controlled
5 substance; or

6 (C) He or she is under the influence of any other drug;
7 or

8 (D) He or she is under the combined influence of
9 alcohol and any controlled substance or any other drug; or

10 (E) He or she has an alcohol concentration in his or her
11 blood of four hundredths of one percent or more, by weight;
12 and

13 (2) When so operating an aircraft does any act forbidden
14 by law or fails to perform any duty imposed by law in the
15 operation of such aircraft, which act or failure proximately
16 causes bodily injury to any person other than himself or
17 herself, is guilty of a felony, and, upon conviction thereof,
18 shall be imprisoned in the penitentiary for a definite term of
19 imprisonment of not less than one year nor more than five
20 years, or in the discretion of the court, be confined in jail not
21 more than one year and be fined not more than \$500.

22 (b) Any person who:

23 (1) Operates an aircraft in this state while:

24 (A) He or she is under the influence of alcohol; or

25 (B) He or she is under the influence of any controlled
26 substance; or

27 (C) He or she is under the influence of any other drug;
28 or

29 (D) He or she is under the combined influence of
30 alcohol and any controlled substance or any other drug; or

31 (E) He or she has an alcohol concentration in his or her
32 blood of four hundredths of one percent or more, by weight;

33 (2) Is guilty of a misdemeanor, and, upon conviction
34 thereof, shall be confined in jail not more than one year or
35 fined not more than \$500, or both, in the discretion of the
36 court.

37 (c) Any person who:

38 (1) Knowingly permits his or her aircraft to be operated
39 in this state by any other person who is:

40 (A) Under the influence of alcohol; or

41 (B) Under the influence of any controlled substance; or

42 (C) Under the influence of any other drug; or

43 (D) Under the combined influence of alcohol and any
44 controlled substance or any other drug; or

45 (E) Has an alcohol concentration in his or her blood of
46 four hundredths of one percent or more, by weight;

47 (2) Is guilty of a misdemeanor, and, upon conviction
48 thereof, shall be confined in jail not more than one year or
49 fined not more than \$500, or both, in the discretion of the
50 court.

51 (d) A person violating any provision of subsection (a) of
52 this section is, for the second offense under this section, guilty
53 of a felony, and, upon conviction thereof, shall be imprisoned
54 in the penitentiary for a definite term of imprisonment of not
55 less than one year nor more than five years.

56 (e) A person violating any provision of subsection (b) or
57 (c) of this section is, for the second offense under this section,
58 guilty of a felony, and, upon conviction thereof, shall be
59 imprisoned in the penitentiary for a definite term of
60 imprisonment of not less than one year nor more than three
61 years.

62 (f) For purposes of subsections (d) and (e) of this section
63 relating to second and subsequent offenses, the following
64 types of convictions shall be regarded as convictions under
65 this section:

66 (1) Any conviction under the provisions of the prior
67 enactment of this section;

68 (2) Any conviction under a statute of the United States
69 or of any other state of an offense which has the same
70 elements as an offense described in subsection (a), (b) or (c)
71 of this section.

72 (g) A person may be charged in a warrant or indictment
73 or information for a second or subsequent offense under this

74 section if the person has been previously arrested for or
75 charged with a violation of this section which is alleged to
76 have occurred within the applicable time periods for prior
77 offenses, notwithstanding the fact that there has not been a
78 final adjudication of the charges for the alleged previous
79 offense. In such case, the warrant or indictment or
80 information must set forth the date, location and particulars
81 of the previous offense or offenses. No person may be
82 convicted of a second or subsequent offense under this
83 section unless the conviction for the previous offense has
84 become final.

85 (h) The fact that any person charged with a violation of
86 subsection (a) or (b) of this section, or any person permitted
87 to operate an aircraft as described under subsection (c) of
88 this section, is or has been legally entitled to use alcohol, a
89 controlled substance or a drug shall not constitute a defense
90 against any charge of violating subsection (a), (b) or (c) of
91 this section.

92 (i) For purposes of this section, the term “controlled
93 substance” shall have the meaning ascribed to it in chapter
94 sixty-a of this code.

95 (j) When any person is convicted of violating any
96 provision of this section, the clerk of the court in which such
97 conviction is had shall, within seventy-two hours after
98 receipt thereof, transmit a true copy thereof to the federal
99 aviation administration.

§29-2A-14. Federal license required for operation of aircraft.

1 No person shall operate or cause or authorize to be
2 operated any aircraft within this state unless such aircraft
3 has an appropriate effective certificate, permit or license
4 issued by the United States, if such certificate, permit or
5 license is required by the United States; nor shall any
6 person engage in aeronautics as an airman in this state
7 unless he or she has an appropriate effective airman
8 certificate, permit, rating or license issued by the United
9 States authorizing him or her to engage in the particular
10 class of aeronautics in which he or she is engaged, if such

11 certificate, permit, rating or license is required by the
12 United States.

13 Where a certificate, permit, rating or license is required
14 for an airman by the United States, it shall be kept in his or
15 her personal possession when he or she is operating within
16 this state and shall be presented for inspection upon the
17 demand of any law enforcement officer, or any official,
18 manager or person in charge of any airport upon which the
19 airman shall land, or upon the reasonable request of any
20 other person. Where a certificate, permit or license is
21 required by the United States for an aircraft, it shall be
22 carried in the aircraft at all times while the aircraft is
23 operating in the state, shall be conspicuously posted in the
24 aircraft where it may readily be seen by passengers or
25 inspectors, and shall be presented for inspection upon the
26 demand of any law enforcement officer, or any official,
27 manager or person in charge of any airport upon which the
28 aircraft shall land, or upon the reasonable request of any
29 person.

§29-2A-20. Enforcement of aeronautics laws.

1 It shall be the duty of all law enforcement officers, to
2 enforce and assist in the enforcement of this article and all
3 other laws of this state relating to aeronautics. Law
4 enforcement officers are authorized to inspect and examine
5 at reasonable hours any aircraft, the credentials of any
6 airman or other person engaged in aeronautics required by
7 the laws of this state or of the United States to have in his or
8 her possession credentials evidencing his or her authority or
9 permission to engage in aeronautics, any premises and the
10 buildings and other structures thereon, where airports, air
11 navigation facilities or other aeronautical activities are
12 operated or conducted.

§29-2A-9. State airways.

1 [Repealed.]

§29-2A-17. Investigations; hearings; power to subpoena witnesses; self-incrimination.

1 [Repealed.]

§29-2A-18. Disposition of fees.

1 [Repealed.]

§29-2A-19. Federal-state joint hearings; reciprocal services; accident reporting.

1 [Repealed.]

§29-2A-21. Use of state and municipal facilities and services.

1 [Repealed.]

§29-2A-22. Commission orders, notices and opportunity for hearings.

1 [Repealed.]

§29-2A-23. Judicial review of commission's action.

1 [Repealed.]

§29-2A-24. Penalties for violation of provisions of article.

1 [Repealed.]

§29-2A-25. Exchange of information as to violations.

1 [Repealed.]

§29-2A-26. Severability.

1 [Repealed.]

§29-2A-27. Repeal.

1 [Repealed.]

§29-2A-28. Short title.

1 [Repealed.]

CHAPTER 131

(Com. Sub. for H. B. 3021 - By Delegate Espinosa)

[Passed March 5, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §19-23-14 of the Code of West Virginia, 1931, as amended, requiring the payment of all civil penalties imposed against thoroughbred horse racing licensees or permit holders to be paid into a fund for expenses associated with the post-mortem examination of all thoroughbreds that suffer breakdowns and are euthanized on a racetrack or that otherwise expire on a racetrack; requiring that any funds in excess of \$10,000 in such fund at the end of a fiscal year, less outstanding obligations, may be expended by the racing commission to aid in the rescue, retraining, rehabilitation and aftercare of thoroughbred racehorses that are no longer able to compete on the racetracks in this state, and may be expended to aid in the payment of hospitalization, medical care and funeral expenses occasioned by injuries or death sustained by a thoroughbred racing permit holder at a licensed thoroughbred racetrack in this state; authorizing the racing commission to promulgate rules to govern such expenditures; and requiring the payment of all civil penalties imposed against greyhound racing licensees or permit holders to be paid into a fund to be expended for greyhound adoption programs involving West Virginia whelped dogs owned by residents of this state pursuant to rules promulgated by the racing commission.

Be it enacted by the Legislature of West Virginia:

ARTICLE 23. HORSE AND DOG RACING.

§19-23-14. Disposition of permit fees, registration fees and civil penalties.

- 1 (a) All permit fees and fees paid for the registration of
- 2 colors or assumed names collected by the Racing

3 Commission shall be paid by the commission to the State
4 Treasurer for deposit in the Racing Commission's general
5 administrative account.

6 (b) All civil penalties imposed by the stewards, or the
7 commission against thoroughbred horse racing licensees or
8 permit holders shall be paid into a fund for expenses
9 associated with the post-mortem examination of
10 thoroughbreds that suffer breakdowns on a racetrack, in
11 training or in competition, and that are euthanized, or
12 thoroughbreds that expire while stabled on a racetrack under
13 the jurisdiction of the Racing Commission: *Provided*, That
14 any balance in the fund at the end of any fiscal year in excess
15 of \$10,000, less any outstanding obligations, shall be
16 divided equally and may be expended by the Racing
17 Commission for the following:

18 (1) To aid in the rescue, retraining, rehabilitation and
19 aftercare of thoroughbred racehorses that are no longer able
20 to compete on the racetracks in this state pursuant to rules
21 promulgated by the Racing Commission to govern such
22 expenditures.

23 (2) To aid in the payment of hospitalization, medical care
24 and funeral expenses occasioned by injuries or death sustained
25 by a thoroughbred racing permit holder at a licensed
26 thoroughbred racetrack in this state pursuant to rules
27 promulgated by the Racing Commission to govern such
28 expenditures: *Provided*, That no payment shall be made for
29 any hospitalization, medical care or funeral expenses to any
30 thoroughbred racing permit holder who is covered under
31 workers compensation insurance or who is covered under any
32 insurance policy that provides full or partial payments for
33 hospitalization, medical care or funeral expenses.

34 (c) All civil penalties imposed by the judges or the
35 commission against greyhound racing licensees or permit
36 holders shall be paid into a fund to be expended for
37 greyhound adoption programs involving West Virginia
38 whelped dogs owned by residents of this state pursuant to
39 rules promulgated by the Racing Commission.

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CHAPTER 132

(H. B. 3141 - By Delegates Shott, Byrd, Fast, D. Kelly and Miller)

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

AN ACT to amend and reenact §4-8-4 of the Code of West Virginia, 1931, as amended, relating to expanding areas of the capitol complex requiring Capitol Building Commission authorization for certain renovations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. CAPITOL BUILDING COMMISSION.

§4-8-4. Powers and duties generally.

1 The Capitol Building Commission shall review and
2 approve or reject all plans recommending substantial
3 physical changes inside or outside the state capitol building
4 or surrounding complex, which affect the appearance
5 thereof. In all instances constituting a substantial physical
6 change, the approval of the commission is mandatory before
7 a contract may be let or before changes are started if the
8 work is not done under a contract or before work on a
9 change order in excess of \$40,000 is begun and includes all
10 areas occupied by the Legislature, the Governor, and the
11 Supreme Court of Appeals. As used in this article, the
12 surrounding complex shall include the Governor's Mansion
13 and other buildings used by the Governor as part of his or
14 her residence, the state science and cultural center, all state
15 office buildings located in the immediate vicinity of the
16 state capitol, and the roadways, structures and facilities
17 which are incidental to such buildings. As used in this

18 article, substantial physical change shall include, but not be
19 limited to, permanent physical changes that alter the
20 appearance of all areas of the capitol building and
21 surrounding complex. The secretary of the Department of
22 Administration shall promulgate rules and regulations,
23 pursuant to the provisions of §29A-1-1 *et seq.* of this code,
24 which rules and regulations shall be subject to the approval
25 of the Capitol Building Commission, to implement the
26 provisions of this article.



CHAPTER 133

(Com. Sub. for S. B. 1 - By Senators Carmichael (Mr. President), Sypolt, Cline, Takubo, Boso, Clements, Swope, Smith, Ihlenfeld, Baldwin, Stollings, Weld and Plymale)

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

AN ACT to amend and reenact §18-2-6 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-2E-11; to amend and reenact §18-9A-2 of said code; to amend said code by adding thereto a new section, designated §18B-3C-16; and to amend said code by adding thereto a new article, designated §18C-9-1, §18C-9-2, §18C-9-3, §18C-9-4, §18C-9-5, and §18C-9-6, all relating generally to increasing access to career education and workforce training; requiring State Board of Education to promulgate rules for advanced certifications; providing that certain individuals who have completed a secondary education program in a public, private, or home school shall be considered adults enrolled in regular secondary programs for funding purposes; redesignating certain qualifying tests as high school equivalency tests; requiring pathways and other

additional requirements for Advanced Career Education programs; requiring community and technical colleges, public baccalaureate institutions, career technical education centers, and county boards of education, or any combination of such secondary and postsecondary entities, to establish partnerships that provide for Advanced Career Education programs; providing requirements for Advanced Career Education programs and pathways; requiring Department of Commerce to provide written notification to State Board of Education, West Virginia Council for Community and Technical College Education, and West Virginia Higher Education Policy Commission of a determination of areas of workforce need within the state and to develop a hierarchy therefor; requiring State Superintendent of Schools, Chancellor of the Council for Community and Technical College Education, Chancellor of the Higher Education Policy Commission, and the Chancellor of the Higher Education Policy Commission to facilitate the Advanced Career Education programs; requiring State Board of Education and West Virginia Council for Community and Technical College Education to jointly promulgate certain guidelines and maintain and report certain information to Governor and Legislative Oversight Commission on Education Accountability; requiring State Superintendent of Schools, Chancellor for the Council for Community and Technical College Education, and Chancellor of the Higher Education Policy Commission to approve written partnership agreements; modifying definition of “net enrollment” to increase number of Advanced Career Education programs students for which secondary education funding may be provided and imposing conditions on certain institutions to receive funding; encouraging community and technical colleges that offer associate degrees to enter into collaborative agreements with federally registered apprenticeship programs and requiring a report regarding such collaborative agreements be provided to the Legislature and Governor annually; establishing WV Invests Grant Program; providing findings and purposes; defining terms; providing for administration of program by vice chancellor for

administration; requiring West Virginia Council for Community and Technical College Education to award WV Invests grants under certain terms and conditions; requiring the council to report certain information on WV Invests Grant Program to Governor and Legislature; requiring the council to propose legislative rules and authorizing emergency rules; limiting eligibility for funding beginning fiscal year 2021; providing eligibility and renewal requirements for a WV Invests Grant; requiring applicants enter into certain agreements; and establishing the WV Invests Fund.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Classification and standardization of schools; standards for degrees and diplomas; certificates of proficiency; establishment of alternative education programs.

1 (a) The state board shall promulgate rules for the
2 accreditation, classification, and standardization of all
3 schools in the state, except institutions of higher education,
4 and shall determine the minimum standards for granting
5 diplomas, advanced certifications, and certificates of
6 proficiency by those schools.

7 (1) The certificates of proficiency shall include specific
8 information regarding the graduate's skills, competence,
9 and readiness for employment, or honors and advanced
10 education and shall be granted, along with the diploma, to
11 every eligible high school graduate.

12 (2) The certificate of proficiency shall include the
13 program of study major completed by the student only for
14 those students who have completed the required major
15 courses, or higher level courses, advanced placement
16 courses, college courses, or other more rigorous substitutes
17 related to the major, and the recommended electives.

18 (3) Students who have completed a secondary education
19 program in a public, private, or home school and have
20 continued to be enrolled in a program leading to an
21 advanced certification or an advanced career education
22 program shall be considered adults enrolled in regular
23 secondary programs in accordance with §18-9A-2(i) of this
24 code: *Provided*, That the State Superintendent of Schools,
25 the Chancellor for the Council for Community and
26 Technical College Education, the Chancellor of the Higher
27 Education Policy Commission, and the Secretary of the
28 Department of Commerce may designate additional
29 programs that provide valuable workplace credentials and
30 students enrolled in such programs shall also be considered
31 adults enrolled in regular secondary programs in accordance
32 with §18-9A-2(i) of this code.

33 (b) An institution of less than collegiate or university
34 status may not grant any diploma or certificate of
35 proficiency on any basis of work or merit below the
36 minimum standards prescribed by the state board.

37 (c) A charter or other instrument containing the right to
38 issue diplomas or certificates of proficiency may not be
39 granted by the State of West Virginia to any institution or
40 other associations or organizations of less than collegiate or
41 university status within the state until the condition of
42 granting or issuing the diplomas or other certificates of
43 proficiency has first been approved in writing by the state
44 board.

45 (d) The state board shall promulgate a rule for the
46 approval of alternative education programs for disruptive
47 students who are at risk of not succeeding in the traditional
48 school structure.

49 (1) This rule may provide for the waiver of other
50 policies of the state board, the establishment and delivery of
51 a nontraditional curriculum, the establishment of licensure
52 requirements for alternative education program teachers,

53 and the establishment of performance measures for school
54 accreditation.

55 (2) This rule shall provide uniform definitions of
56 disruptive student behavior and uniform standards for the
57 placement of students in alternative settings or providing
58 other interventions including referrals to local juvenile
59 courts to correct student behavior so that they can return to
60 a regular classroom without engaging in further disruptive
61 behavior.

62 (e) The state board shall establish up to five pilot
63 projects at the elementary or middle school levels, or both,
64 that employ alternative schools or other placements for
65 disruptive students to learn appropriate behaviors so they
66 can return to the regular classroom without further
67 disrupting the learning environment. The state board shall
68 report to the Legislative Oversight Commission on
69 Education Accountability by December 1, 2010, on its
70 progress in establishing the pilot projects and by December
71 1 in each year after that for the duration of the pilot projects
72 on the effect of the projects on maintaining student
73 discipline.

74 (f) If a student attends an approved alternative education
75 program or the Mountaineer Challenge Academy, which is
76 designated as a special alternative education program
77 pursuant to §15-1B-24 of this code, and the student
78 graduates or passes the high school equivalency tests within
79 five years of beginning ninth grade, that student shall be
80 considered graduated for the purposes of calculating the
81 high school graduation rate used for school accreditation
82 and school system approval, subject to the following:

83 (1) The student shall be considered graduated only to
84 the extent that this is not in conflict with any provision of
85 federal law relating to graduation rates;

86 (2) If the state board determines that this is in conflict
87 with a provision of federal law relating to graduation rates,

88 the state board shall request a waiver from the United States
89 Department of Education; and

90 (3) If the waiver is granted, notwithstanding the
91 provisions of §18-2-6(f)(1) of this code, the student
92 graduating or passing the high school equivalency tests
93 within five years shall be considered graduated.

94 (g) The state board shall promulgate a rule to support
95 the operation of the National Guard Youth Challenge
96 Program operated by the Adjutant General and known as the
97 Mountaineer Challenge Academy which is designated as a
98 special alternative education program pursuant to §15-1B-
99 24 of this code for students who are at risk of not succeeding
100 in the traditional school structure. The rule shall set forth
101 policies and procedures applicable only to the Mountaineer
102 Challenge Academy that provide for, but are not limited to,
103 the following:

104 (1) Implementation of provisions set forth in §15-1B-24
105 of this code;

106 (2) Precedence of the policies and procedures
107 designated by the National Guard Bureau for the operation
108 of the Mountaineer Challenge Academy special alternative
109 education program;

110 (3) Consideration of a student participating in the
111 Mountaineer Challenge Academy special alternative
112 education program at full enrollment status in the referring
113 county for the purposes of funding and calculating
114 attendance and graduation rates, subject to the following:

115 (A) The student shall be considered at full enrollment
116 status only for the purposes of calculating attendance and
117 graduation rates to the extent that this is not in conflict with
118 any provision of federal law relating to attendance or
119 graduation rates;

120 (B) If the state board determines that this is in conflict
121 with a provision of federal law relating to attendance or

122 graduation rates, the state board shall request a waiver from
123 the United States Department of Education;

124 (C) If the waiver is granted, notwithstanding the
125 provisions of §18-2-6(g)(3)(A) of this code, the student
126 shall be considered at full enrollment status in the referring
127 county for the purposes of calculating attendance and
128 graduation rates; and

129 (D) Consideration of the student at full enrollment status
130 in the referring county is for the purposes of funding and
131 calculating attendance and graduation rates only. For any
132 other purpose, a student participating in the academy is
133 considered withdrawn from the public school system;

134 (4) Articulation of the knowledge, skills, and
135 competencies gained through alternative education so that
136 students who return to regular education may proceed
137 toward attainment or may attain the standards for graduation
138 without duplication;

139 (5) Consideration of eligibility to take the high school
140 equivalency tests by qualifying within the extraordinary
141 circumstances provisions established by state board rule for
142 a student participating in the Mountaineer Challenge
143 Academy special alternative education program who does
144 not meet any other criteria for eligibility; and

145 (6) Payment of tuition by a county board to the
146 Mountaineer Challenge Academy for each student
147 graduating from the academy with a high school diploma
148 that resides in that county board's school district. For
149 purposes of this subdivision, "tuition" means an amount
150 equal to 75 percent of the amount allotted per pupil under
151 the school aid formula.

152 (h) Nothing in this section or the rules promulgated
153 under this section compels the Mountaineer Challenge
154 Academy to be operated as a special alternative education

155 program or to be subject to any other laws governing the
156 public schools except by its consent.

157 (i) The Legislature makes the following findings
158 regarding students at risk:

159 (1) *Defeated and discouraged learners.* —

160 (A) Any child who is unlikely to graduate on schedule
161 with both the skills and self-esteem necessary to exercise
162 meaningful options in the areas of work, leisure, culture,
163 civic affairs, and personal relationships may be defined as
164 being an at-risk student;

165 (B) Problems associated with students at risk often
166 begin for them in the early grades as they gradually fall
167 further behind in the essential skills of reading, writing, and
168 math;

169 (C) These problems may be accompanied by such
170 behavior patterns as poor attendance, inattentiveness,
171 negative attitudes, and acting out in class. These patterns are
172 both symptoms of and added catalysts for students to
173 become increasingly defeated and discouraged learners;

174 (D) By the middle grades, students with growing skill
175 deficits usually know they are behind other students and
176 have good reason to feel discouraged. A growing lack of
177 self-confidence and self-worth, limited optimism for the
178 future, avoidance of school and adults, and a dimming view
179 of the relationship between effort and achievement are
180 among the characteristics of defeated and discouraged
181 learners;

182 (E) Public schools are expected to address the needs of
183 all students, minimizing the likelihood that they will
184 become at risk and giving additional attention to those who
185 do; however, the circumstances involved with a becoming
186 at risk often are complex and may include influences both
187 within and outside of the school environment; and

188 (F) In fragile homes, a child who is at risk and is
189 becoming a discouraged and defeated learner often lacks
190 adequate support and may develop peer relationships that
191 further exacerbate the difficulty of reengaging him or her in
192 learning, school, and responsible social behavior.

193 (2) The Legislature further finds that the public schools
194 should not be deterred from seeking and assisting with
195 enrollment of students in an alternative program that helps
196 remedy the discouragement, lessens skill deficits, and
197 facilitates a successful return to public school.

198 (j) For this purpose, subject to approval of the county
199 superintendent, a student enrolled in the public schools of
200 the county may continue to be enrolled while also enrolled
201 in an alternative program subject to the following
202 conditions:

203 (1) The alternative program is approved by the state
204 board;

205 (2) The student meets the general description of an at-
206 risk student and exhibits behaviors and characteristics
207 associated with a discouraged and defeated learner;

208 (3) The alternative program complies with all requests
209 of the county superintendent for information on the
210 educational program and progress of the student;

211 (4) The alternative program includes a family
212 involvement component in its program. This component
213 shall include, but is not limited to, providing for student and
214 parent participation in activities that help address the
215 challenging issues that have hindered the student's
216 engagement and progress in learning;

217 (5) The alternative program includes an on-site boarding
218 option for students;

219 (6) The alternative program provides an individualized
220 education program for students that is designed to prepare

221 them for a successful transition back into the public schools;
222 and

223 (7) The parents or legal guardian of the student make
224 application for enrollment of the student in the alternative
225 program, agree to the terms and conditions for enrollment,
226 and enroll the student in the program.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-11. Advanced Career Education.

1 (a) The Legislature hereby makes the following
2 findings:

3 (1) Preparing West Virginia students to achieve post-
4 secondary career education and to excel in the workforce is
5 a responsibility shared among all state education agencies
6 and institutions. The state's education agencies and
7 institutions can fulfill this responsibility by establishing
8 partnerships that enable students to attain advanced career
9 education and valuable workforce skills in a more efficient
10 and advantageous manner;

11 (2) The formation of partnerships between public
12 secondary schools and community and technical colleges or
13 public baccalaureate institutions which establish advanced
14 career education programs would ensure that a full range of
15 community and technical college programs and services are
16 provided in all areas of the state;

17 (3) Programs which create clear and efficient pathways
18 that begin during secondary education and lead to obtaining
19 advanced certifications and associate degrees will increase
20 the number of students that ultimately obtain a post-
21 secondary credential or degree; and

22 (4) West Virginia's economic prosperity is directly tied
23 to the level and quality of its workforce career education.
24 Providing the students of this state with increased access to

25 career education will not only improve the general well-
26 being of its citizens, but greatly enhance the economic
27 prosperity of the state.

28 (b) The purpose of this section and the Advanced Career
29 Education (ACE) programs authorized herein is to connect
30 secondary schools with community and technical colleges
31 or public baccalaureate institutions that provide associate
32 degrees to accomplish the following:

33 (1) Prepare secondary students for success in post-
34 secondary education and the workforce; and

35 (2) Provide more opportunities for secondary students
36 to earn post-secondary college credits, certifications, and
37 associate degrees.

38 (c) To effectuate the purposes set forth in §18-2E-11(b)
39 of this code, community and technical colleges, public
40 baccalaureate institutions, career technical education
41 centers, and county boards of education, or any combination
42 of such secondary and postsecondary entities, shall establish
43 partnerships that provide for ACE programs which feature
44 defined pathways that begin when a student is in secondary
45 education and that ultimately lead to advanced certifications
46 or associate degrees awarded by community and technical
47 colleges or baccalaureate institutions. ACE programs shall
48 be equally available to public, nonpublic, and homeschool
49 students.

50 (d) ACE programs shall include pathways that consist
51 of a curriculum of courses leading to advanced certifications
52 or an associate degree that have been deemed to satisfy a
53 workforce need as determined by the Department of
54 Commerce.

55 (1) The Department of Commerce shall, on occasion,
56 but at least annually, provide written notification to the State
57 Board of Education, the West Virginia Council for
58 Community and Technical College Education and the West

59 Virginia Higher Education Policy Commission of a
60 determination of areas of workforce need within the state.

61 (2) The Department of Commerce, in consultation with
62 the council, the commission, and business partners, will
63 develop a hierarchy of high demand skilled professions and
64 workforce needs with shortages, which shall be given
65 priority in administration of the program.

66 (e) The State Superintendent of Schools, the Chancellor
67 of the Council for Community and Technical College
68 Education, and the Chancellor of the Higher Education
69 Policy Commission, or their designees, shall facilitate the
70 ACE programs. At a minimum, an ACE program shall
71 satisfy the following objectives:

72 (1) Provide additional opportunities to students in this
73 state to attain advanced certifications and college
74 credentials leading to associate degrees through ACE
75 pathways;

76 (2) Increase the number of students in this state that
77 attain advanced certifications and college credentials
78 leading to associate degrees through ACE pathways;

79 (3) Allow students in this state to attain advanced
80 certifications and college credentials leading to associate
81 degrees through ACE pathways at little or no cost;

82 (4) Ensure that ACE pathways provide a clear roadmap
83 to the courses and requirements necessary to attain
84 advanced certifications and college credentials leading to
85 associate degrees; and

86 (5) Ensure that course requirements within ACE
87 pathways are not duplicated.

88 (f) The board and council shall jointly promulgate
89 guidelines for the administration of ACE programs and
90 pathways, which must be affirmatively adopted by the board

91 and the council. At a minimum, such guidelines shall
92 provide for the following:

93 (1) That ACE program partnerships established between
94 community and technical colleges, public baccalaureate
95 institutions, career technical education centers, and county
96 boards of education, or any combination of such secondary
97 and postsecondary entities, shall be reduced to written
98 partnership agreements;

99 (2) The information required to be contained within
100 partnership agreements;

101 (3) That ACE programs and pathways must meet the
102 requirements of the accrediting entity for the community
103 and technical college or public baccalaureate institution
104 awarding the associate degrees or advanced certificates;

105 (4) That partnership agreements shall be approved by
106 the State Superintendent of Schools, the Chancellor for the
107 Council for Community and Technical College Education
108 and the Chancellor of the Higher Education Policy
109 Commission; and

110 (5) Any other provisions necessary to effectuate the
111 purposes of this section.

112 (g) The board and the council shall maintain and
113 annually report to the Governor and the Legislative
114 Oversight Commission on Education Accountability the
115 following information about ACE programs:

116 (1) The identity and number of partnership agreements;

117 (2) The ACE programs and pathways that are being
118 utilized by career technical education centers, county boards
119 of education, community and technical colleges, and public
120 baccalaureate institutions; and

121 (3) The nature and number of degrees and certifications
122 awarded to students participating in ACE programs by each

123 community and technical college, public baccalaureate
124 institution and career technical education center.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-2. Definitions.

1 For the purpose of this article:

2 (a) “State board” means the West Virginia Board of
3 Education.

4 (b) “County board” or “board” means a county board of
5 education.

6 (c) “Professional salaries” means the state legally
7 mandated salaries of the professional educators as provided
8 in §18A-4-1 *et seq.* of this code.

9 (d) “Professional educator” shall be synonymous with
10 and shall have the same meaning as “teacher” as defined in
11 §18-1-1 of this code, and includes technology integration
12 specialists.

13 (e) “Professional instructional personnel” means a
14 professional educator whose regular duty is as that of a
15 classroom teacher, librarian, attendance director, or school
16 psychologist. A professional educator having both
17 instructional and administrative or other duties shall be
18 included as professional instructional personnel for that
19 ratio of the school day for which he or she is assigned and
20 serves on a regular full-time basis in appropriate instruction,
21 library, attendance, or psychologist duties.

22 (f) “Professional student support personnel” means a
23 “teacher” as defined in §18-1-1 of this code who is assigned
24 and serves on a regular full-time basis as a counselor or as a
25 school nurse with a bachelor’s degree and who is licensed
26 by the West Virginia Board of Examiners for Registered
27 Professional Nurses. For all purposes except for the
28 determination of the allowance for professional educators

29 pursuant to §18-9A-4 of this code, professional student
30 support personnel are professional educators.

31 (g) “Service personnel salaries” means the state legally
32 mandated salaries for service personnel as provided in
33 §18A-4-8a of this code.

34 (h) “Service personnel” means all personnel as provided
35 in §18A-4-8 of this code. For the purpose of computations
36 under this article of ratios of service personnel to net
37 enrollment, a service employee shall be counted as that
38 number found by dividing his or her number of employment
39 days in a fiscal year by 200: *Provided*, That the computation
40 for any service person employed for three and one-half
41 hours or fewer per day as provided in §18A-4-8a of this
42 code shall be calculated as one-half an employment day.

43 (i) “Net enrollment” means the number of pupils
44 enrolled in special education programs, kindergarten
45 programs, and grades one to 12, inclusive, of the public
46 schools of the county. Net enrollment further shall include:

47 (1) Adults enrolled in regular secondary vocational
48 programs, subject to the following:

49 (A) Net enrollment includes no more than 2,500 of those
50 adults counted on the basis of full-time equivalency and
51 apportioned annually to each county to support Advanced
52 Career Education programs, as provided in §18-2E-11 of
53 this code, in proportion to the adults participating in regular
54 secondary vocational programs in the prior year counted on
55 the basis of full-time equivalency: *Provided*, That beginning
56 with the 2021 fiscal year and every year thereafter, a career
57 technical education center may only receive the funding for
58 enrollment as authorized by this paragraph if the center has
59 satisfied the requirements of §18-2E-11 of this code; and

60 (B) Net enrollment does not include any adult charged
61 tuition or special fees beyond that required of the regular
62 secondary vocational student;

63 (2) Students enrolled in early childhood education
64 programs as provided in §18-5-44 of this code, counted on
65 the basis of full-time equivalency;

66 (3) A pupil may not be counted more than once by
67 reason of transfer within the county or from another county
68 within the state, and a pupil may not be counted who attends
69 school in this state from another state;

70 (4) The enrollment shall be modified to the equivalent
71 of the instructional term and in accordance with the
72 eligibility requirements and rules established by the state
73 board; and

74 (5) For the purposes of determining the county's basic
75 foundation program only, for any county whose net
76 enrollment as determined under all other provisions of this
77 definition is less than 1,400, the net enrollment of the county
78 shall be increased by an amount to be determined in
79 accordance with the following:

80 (A) Divide the state's lowest county student population
81 density by the county's actual student population density;

82 (B) Multiply the amount derived from the calculation in
83 §18-9A-2(i)(5)(A) of this code by the difference between
84 1,400 and the county's actual net enrollment;

85 (C) If the increase in net enrollment as determined under
86 this subdivision plus the county's net enrollment as
87 determined under all other provisions of this subsection is
88 greater than 1,400, the increase in net enrollment shall be
89 reduced so that the total does not exceed 1,400; and

90 (D) During the 2008-2009 interim period and every
91 three interim periods thereafter, the Legislative Oversight
92 Commission on Education Accountability shall review this
93 subdivision to determine whether or not these provisions
94 properly address the needs of counties with low enrollment
95 and a sparse population density.

96 (j) “Sparse-density county” means a county whose ratio
97 of net enrollment, excluding any increase in the net
98 enrollment of counties, pursuant to §18-9A-2(i)(5) of this
99 code, of the definition of “net enrollment”, to the square
100 miles of the county is less than five.

101 (k) “Low-density county” means a county whose ratio
102 of net enrollment, excluding any increase in the net
103 enrollment of counties, pursuant to §18-9A-2(i)(5) of this
104 code, of the definition of “net enrollment”, to the square
105 miles of the county is equal to or greater than five but less
106 than 10.

107 (l) “Medium-density county” means a county whose
108 ratio of net enrollment, excluding any increase in the net
109 enrollment of counties, pursuant to §18-9A-2(i)(5) of this
110 code, of the definition of “net enrollment”, to the square
111 miles of the county is equal to or greater than 10 but less
112 than 20.

113 (m) “High-density county” means a county whose ratio
114 of net enrollment, excluding any increase in the net
115 enrollment of counties, pursuant to §18-9A-2(i)(5) of this
116 code, of the definition of “net enrollment”, to the square
117 miles of the county is equal to or greater than 20.

118 (n) “Levies for general current expense purposes”
119 means 90 percent of the levy rate for county boards of
120 education calculated or set by the Legislature pursuant to
121 §11-8-6f of this code.

122 (o) “Technology integration specialist” means a
123 professional educator who has expertise in the technology
124 field and is assigned as a resource teacher to provide
125 information and guidance to classroom teachers on the
126 integration of technology into the curriculum.

127 (p) “State aid eligible personnel” means all professional
128 educators and service personnel employed by a county
129 board in positions that are eligible to be funded under this

130 article and whose salaries are not funded by a specific
131 funding source such as a federal or state grant, donation,
132 contribution, or other specific funding source not listed.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-16. Encouragement of collaborative agreements between community and technical colleges and federally registered apprenticeship programs.

1 (a) The Legislature finds that apprenticeship programs
2 provide a valuable educational opportunity that can be
3 enhanced by community and technical colleges that offer
4 associate degrees. Accordingly, the Legislature hereby
5 encourages, but is not requiring, community and technical
6 colleges that offer associate degrees to enter into
7 collaborative agreements with federally registered
8 apprenticeship programs that are registered with the United
9 States Department of Labor.

10 (b) On or before January 1 of each year, the council shall
11 provide to the Legislature and the Governor a report
12 regarding the collaborative agreements between community
13 and technical colleges and federally registered
14 apprenticeships programs. The report should identify those
15 community and technical colleges that have entered into a
16 collaborative agreement with federally registered
17 apprenticeship programs, the number of students
18 participating in such apprenticeship programs, the number
19 of community and technical colleges credits earned by
20 students in such apprenticeship programs, the number of
21 students employed in a relevant field of study during such
22 apprenticeship programs and for the year after completion
23 of such apprenticeship programs, and the average
24 compensation of the students employed in a relevant field
25 of study during their enrollment in such apprenticeship

26 programs and for the year after completion of such
27 apprenticeship programs.

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

ARTICLE 9. WEST VIRGINIA INVESTS GRANT PROGRAM.

§18C-9-1. Short title.

1 This article shall be known and may be cited as the WV
2 Invests Grant Program.

§18C-9-2. Legislative findings and purpose.

1 (a) The Legislature hereby finds and declares that:

2 (1) Every West Virginian should have access to
3 education and training that will lead directly to quality
4 employment opportunities within the state. In order for
5 West Virginia to retain and attract business and industry, it
6 must ensure that its workforce has such education and
7 training;

8 (2) West Virginia currently faces a human capital crisis,
9 as the state regularly ranks amongst the lowest states in the
10 nation in workforce participation rates. Improving the
11 state's workforce participation rates and the level of the
12 workforce's career education is critical to economic
13 development and making West Virginia a more prosperous
14 state;

15 (3) The 2017 West Virginia Forward Report, a strategy
16 for economic development and job growth, found that
17 "investments in improving human capital are considered the
18 most significant opportunity for improvement in West
19 Virginia, especially because access to a specialized
20 workforce is a significant factor for investment
21 attraction...";

22 (4) According to the United States Department of
23 Labor's Bureau of Labor Statistics, the median yearly

24 earnings of an individual with an associate’s degree is
25 approximately \$6,604 more than an individual with only a
26 high school diploma. Therefore, any investment by the state
27 into a citizen obtaining such a degree would be repaid
28 multiple times over through the citizen’s increased
29 contributions to the economy and tax base;

30 (5) West Virginia is currently facing a devastating drug
31 epidemic, and the hope that comes with increased access to
32 career education and higher quality employment
33 opportunities is an indispensable tool against the spread of
34 drug addiction; and

35 (6) An investment by the state into increasing access to
36 post-secondary career education will provide its citizens the
37 hope and opportunity for better career opportunities, and
38 provide the state with the trained workforce needed to
39 attract significant economic development.

40 (b) The purpose of this article is to provide West
41 Virginians with hope and economic prosperity by increasing
42 access to a higher level of career education that is needed to
43 fulfill the needs of today’s workforce and provide for further
44 economic development.

§18C-9-3. Definitions.

1 As used in this article:

2 “Council” means the West Virginia Council for
3 Community and Technical College Education;

4 “Commission” means the West Virginia Higher
5 Education Policy Commission;

6 “Eligible institution” means a public community and
7 technical college under the authority of the West Virginia
8 Council for Community and Technical College Education
9 or a public baccalaureate institution that grants associate
10 degrees satisfying the requirements of participating in

11 Advanced Career Education (ACE) program partnerships in
12 accordance with §18-2E-11 of this code;

13 “Eligible post-secondary program” means a curriculum
14 of courses leading to a certificate or associate degree at an
15 eligible institution which satisfies a course of study that has
16 been deemed by the Department of Commerce to satisfy a
17 workforce need as determined by the department in
18 accordance with §18-2E-11(d) of this code; and

19 “Tuition” means the semester or term charges imposed
20 by an eligible institution and, additionally, all mandatory
21 fees required as a condition of enrollment by all students.

§18C-9-4. WV Invests Grant Program.

1 (a) There is hereby created a grant program known as
2 the WV Invests Grant Program, which shall be administered
3 by the vice chancellor for administration in accordance with
4 this article.

5 (b) The council shall award WV Invests Grants pursuant
6 to the following terms and conditions:

7 (1) A WV Invests Grant may only be awarded to
8 applicants satisfying the requirements provided in §18C-9-
9 5 of this code;

10 (2) The maximum amount of a WV Invests Grant shall
11 be the cost of tuition charged to all students for coursework
12 leading to completion of the chosen associate degree or
13 certificate, less all other state and federal scholarships and
14 grants for which the student is eligible. All other state and
15 federal scholarships and grants for which the grant recipient
16 is eligible shall be deducted from the amount of the WV
17 Invests Grant for each individual student. The amount of a
18 WV Invests Grant at an eligible public baccalaureate
19 institution shall not exceed the average cost of tuition and
20 mandatory fees of the community and technical colleges.

21 (3) Grant payments shall be made directly to the eligible
22 institutions;

23 (4) If a grant recipient transfers from one eligible
24 institution to another, the grant is transferable only with
25 approval of the vice chancellor for administration;

26 (5) A WV Invests Grant may be used at any eligible
27 institution to seek an associate degree or certificate in an
28 eligible post-secondary program. An institution is not
29 required to accept a grant recipient for enrollment and may
30 enforce its own admission requirements, standards, and
31 policies; and

32 (6) If a WV Invests Grant recipient terminates
33 enrollment for any reason during the academic year, the
34 unused portion of the grant shall be returned by the
35 institution to the council in accordance with the council's
36 policy for issuing refunds. The council shall transfer such
37 funds to the WV Invests Fund for allocation and
38 expenditure.

39 (c) On or before January 1 annually, the council shall
40 provide to the Legislature and the Governor a report on the
41 WV Invests Grant Program, which shall include, but not be
42 limited to, research and data concerning student success and
43 grant retention.

44 (d) The council shall propose legislative rules for
45 legislative approval pursuant to §29A-3A-1 *et seq.* of this
46 code to implement the provisions of this article, which shall
47 provide for:

48 (1) Application requirements and deadlines fully
49 implementing requirements of this article;

50 (2) Appeal procedures for the denial or revocation of the
51 grant; and

52 (3) Any other provisions necessary to effectuate the
53 purposes of this article.

54 (e) The Legislature hereby declares that an emergency
55 situation exists and, therefore, the council may establish, by
56 emergency rule, under the procedures of §29A-3A-1 *et seq.*
57 of this code, a rule to implement the provisions of this
58 article.

59 (f) Beginning with the 2021 fiscal year, and for every
60 fiscal year thereafter, any appropriation by the Legislature
61 to support and or alleviate the cost to citizens in this state to
62 obtain advanced certifications and associate degrees shall
63 only be distributed to those community and technical
64 colleges or public baccalaureate institutions that form one
65 or more partnerships to establish ACE programs and
66 pathways. Once distributed, such funds may be used to
67 support any eligible post-secondary program or pathway
68 provided by an eligible institution leading to the award of
69 such degree or certification.

§18C-9-5. Eligibility requirements; agreements.

1 (a) To be eligible for a WV Invests Grant, an individual
2 must satisfy the following requirements:

3 (1) Be a citizen or legal resident of the United States and
4 have been a resident of West Virginia for at least one year
5 immediately preceding the date of application for a grant;

6 (2) Have completed a secondary education program in a
7 public, private, or home school;

8 (3) Have not been previously awarded a post-secondary
9 degree;

10 (4) Be at least 18 years of age: *Provided*, That
11 individuals younger than 18 years of age may qualify for the
12 grant upon completion of a secondary education program in
13 a public, private, or home school;

14 (5) Meet the admission requirements of, and be admitted
15 into, an eligible institution;

16 (6) Satisfactorily meet any additional qualifications of
17 enrollment, academic promise, or achievement as
18 established by the council through rule;

19 (7) Have filed a completed free application for federal
20 student aid for the academic year in which the grant award
21 is sought;

22 (8) Be enrolled in an eligible post-secondary program;

23 (9) Be enrolled in at least six credit hours per semester;

24 (10) Have completed a WV Invests Grant application as
25 provided by the council in accordance with a schedule
26 established by the council; and

27 (11) Have, prior to the start of each semester,
28 satisfactorily passed a drug test administered by the eligible
29 institution: *Provided*, That the applicant shall be responsible
30 for the actual cost of the drug test.

31 (b) Each grant may be renewed until the course of study
32 is completed as long as the following qualifications, as
33 determined by the vice chancellor for administration and the
34 council, are satisfied:

35 (1) Maintaining satisfactory academic standing,
36 including a cumulative grade point average of at least 2.0;

37 (2) Making adequate progress toward completion of the
38 eligible post-secondary program;

39 (3) Satisfactory participation in a community service
40 program authorized by the council. The council shall
41 include in the legislative rules, required by §18C-9-4 of this
42 code, provisions for the administration of community
43 service requirements, including, but not limited to, requiring
44 completion of at least eight hours of unpaid community
45 service during the time of study, which may include, but is
46 not limited to, participating with nonprofit, governmental,
47 institutional, or community-based organizations designed to

48 improve the quality of life for community residents, meet
49 the needs of community residents, or foster civic
50 responsibility;

51 (4) Continued satisfaction of eligibility requirements
52 provided by §18C-9-5(a) of this code; and

53 (5) Satisfaction of any additional eligibility criteria
54 established by the council through legislative rule.

55 (c) Each recipient of a WV Invests Grant shall enter into
56 an agreement with the vice chancellor for administration,
57 which shall require repayment of an amount of the grant or
58 grants awarded to the recipient, in whole or in part, if a
59 recipient chooses to reside outside the state within two years
60 following obtainment of the degree or certificate for which
61 the grant or grants were awarded. The council may not
62 require a recipient to repay grants, in whole or in part, unless
63 the prospective recipient has been informed of this
64 requirement in writing before initial acceptance of the grant
65 award. Each WV Invests Grant agreement shall include the
66 following:

67 (1) Disclosure of the full terms and conditions under
68 which assistance under this article is provided and under
69 which repayment may be required; and

70 (2) A description of the appeals procedure required to
71 be established under this article.

72 (d) WV Invests Grant recipients found to be in
73 noncompliance with the agreement entered into under
74 §18C-9-5(c) of this code shall be required to repay the
75 amount of the grant awards received, plus interest, and,
76 where applicable, reasonable collection fees, on a schedule
77 and at a rate of interest prescribed in rules promulgated by
78 the council. The council shall also provide for proration of
79 the amount to be repaid by a recipient who maintains
80 employment in the state for a period of time within the time
81 period required under §18C-9-5(c) of this code.

82 (e) A recipient is not in violation of an agreement
83 entered into pursuant to §18C-9-5(c) of this code during any
84 period in which the recipient is meeting any of the following
85 conditions:

86 (1) Pursuing a half-time course of study at an accredited
87 institution of higher education;

88 (2) Serving as a member of the armed services of the
89 United States;

90 (3) Failing to comply with the terms of the agreement
91 due to death or permanent or temporary disability as
92 established by sworn affidavit of a qualified physician; or

93 (4) Satisfying the provisions of any additional
94 repayment exemptions prescribed by the council through
95 rule.

§18C-9-6. WV Invests Fund; established.

1 (a) The WV Invests Fund is hereby created in the State
2 Treasury as a special revenue account. The fund shall be
3 administered by the vice chancellor for administration and
4 may consist of:

5 (1) All appropriations by the Legislature for the WV
6 Invests Fund;

7 (2) Any gifts, grants, or contributions received for the
8 WV Invests Fund; and

9 (3) All interest or other income earned from investment
10 of the WV Invests Fund.

11 (b) The WV Invests Fund shall be expended for the
12 purpose of administering the WV Invests Grant Program,
13 including the awarding of grants authorized by this article.
14 Any funds remaining in the fund at the close of the fiscal
15 year are carried forward for use in the next fiscal year.

16 (c) Nothing in this section requires any specific level of
17 funding by the Legislature nor guarantees or entitles any
18 individual to any benefit or grant of funds.

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CHAPTER 134

**(Com. Sub. for S. B. 441 - By Senators Prezioso,
Beach, Blair, Clements, Ihlenfeld, Maroney, Smith,
Stollings, Sypolt, Takubo, Jeffries, Trump and Weld)**

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

AN ACT to amend and reenact §18B-4-5 of the Code of West Virginia, 1931, as amended, relating to campus police officers of state institutions of higher learning; and allowing governing boards of state institutions of higher learning to appoint all qualified individuals to serve as campus police officers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-5. Campus police officers; appointment; qualifications; authority; compensation and removal; law enforcement grants.

1 (a) The governing boards may appoint qualified
2 individuals to serve as campus police officers upon any
3 premises owned or leased by the State of West Virginia and
4 under the jurisdiction of the governing boards, subject to the
5 conditions and restrictions established in this section.

6 (1) A person who previously was qualified for
7 employment as a law-enforcement officer for an agency or
8 political subdivision of any state is considered qualified for
9 appointment as a campus police officer.

10 (2) Before performing duties as a campus police officer
11 in any county, a person shall qualify as is required of county
12 police officers by:

13 (A) Taking and filing an oath of office as required by
14 §6-1-1 *et seq.* of this code; and

15 (B) Posting an official bond as required by §6-2-1 *et seq.*
16 of this code.

17 (b) A campus police officer may carry a gun and any
18 other dangerous weapon while on duty if the officer fulfills
19 the certification requirement for law-enforcement officers
20 under §30-29-5 of this code or meets the requirements of
21 subsection (a) of this section.

22 (c) It is the duty of a campus police officer to preserve
23 law and order:

24 (1) On the premises under the jurisdiction of the
25 governing board; and

26 (2) On any street, road, or thoroughfare, except
27 controlled access and open country highways, immediately
28 adjacent to or passing through premises, to which the officer
29 is assigned by the president of the institution.

30 (A) For the purpose of this subdivision, the campus
31 police officer is a law-enforcement officer pursuant to the
32 provisions of §30-29-1 *et seq.* of this code;

33 (B) The officer has and may exercise all the powers and
34 authority of a law-enforcement officer as to offenses
35 committed within the area assigned;

36 (C) The officer is subject to all the requirements and
37 responsibilities of a law-enforcement officer;

38 (D) Authority assigned pursuant to this subdivision does
39 not supersede in any way the authority or duty of other law-

40 enforcement officers to preserve law and order on such
41 premises;

42 (E) Campus police officers may assist a local law-
43 enforcement agency on public highways. The assistance
44 may be provided to control traffic in and around premises
45 owned by the state when:

46 (i) Traffic is generated as a result of athletic or other
47 activities conducted or sponsored by the institution; and

48 (ii) The assistance has been requested by the local law-
49 enforcement agency; and

50 (F) Campus police officers may assist a local law-
51 enforcement agency in any location under the agency's
52 jurisdiction at the request of the agency.

53 (d) The salary of a campus police officer is paid by the
54 employing governing board. A state institution may furnish
55 each campus police officer with a firearm and an official
56 uniform to be worn while on duty. The institution shall
57 furnish and require each officer while on duty to wear a
58 shield with an appropriate inscription and to carry
59 credentials certifying the person's identity and authority as
60 a campus police officer.

61 (e) A governing board may at its pleasure revoke the
62 authority of any campus police officer and such officers
63 serve at the will and pleasure of the governing board. The
64 president of the state institution shall report the termination
65 of employment of a campus police officer by filing a notice
66 to that effect in the office of the clerk of each county in
67 which the campus police officer's oath of office was filed.

68 (f) Notwithstanding any other provisions of this code to
69 the contrary, and for purposes of enhancing the ability of
70 campus police officers to perform their duties, a governing
71 board may apply for and receive any public or private grant
72 or other financial award that is available to other law-
73 enforcement agencies in the state.

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CHAPTER 135

**(S. B. 636 - By Senators Rucker, Azinger, Cline,
Plymale, Roberts and Trump)**

[Passed March 4, 2019; in effect from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing legislative rules regarding higher education; authorizing legislative rules for the Higher Education Policy Commission regarding Acceptance of Advanced Placement Credit, Human Resources Administration, Guidelines for Governing Boards in Employing and Evaluating Presidents, and PROMISE Scholarship Program; and authorizing legislative rules for the Council for Community and Technical College Education regarding Tuition and Fees, Acceptance of Advanced Placement Credit, Initial Authorization of Degree-Granting Institutions, Workforce Development: Learn and Earn, Technical Program Development, and West Virginia Advance Rapid Response Grants, and Human Resources Administration.

Be it enacted by the Legislature of West Virginia:

§18B-17-2. Authorizing rules of Higher Education Policy Commission.

- 1 (a) The legislative rule filed in the State Register on
- 2 October 15, 2004, relating to the Higher Education Policy
- 3 Commission (Underwood-Smith Teacher Scholarship
- 4 Program rule), is authorized.

- 5 (b) The legislative rule filed in the State Register on
- 6 October 15, 2004, relating to the Higher Education Policy

7 Commission (West Virginia Engineering, Science, and
8 Technology Scholarship Program rule), is authorized.

9 (c) The legislative rule filed in the State Register on
10 October 15, 2004, relating to the Higher Education Policy
11 Commission (Medical Education Fee and Medical Student
12 Loan Program rule), is authorized.

13 (d) The legislative rule filed in the State Register on
14 October 27, 2005, relating to the Higher Education Policy
15 Commission (authorization of degree-granting institutions),
16 is authorized.

17 (e) The legislative rule filed in the State Register on
18 August 23, 2006, relating to the Higher Education Policy
19 Commission (West Virginia Higher Education Grant
20 Program), is authorized.

21 (f) The legislative rule filed in the State Register on
22 January 4, 2008, relating to the Higher Education Policy
23 Commission (Providing Real Opportunities for Maximizing
24 In-state Student Excellence - PROMISE), is authorized.

25 (g) The legislative rule filed in the State Register on
26 August 25, 2008, relating to the Higher Education Policy
27 Commission (Research Trust Program), is authorized.

28 (h) The legislative rule filed in the State Register on
29 January 8, 2009, relating to the Higher Education Policy
30 Commission (Guidelines for Governing Boards in
31 Employing and Evaluating Presidents), is authorized.

32 (i) The legislative rule filed in the State Register on
33 September 10, 2008, relating to the Higher Education Policy
34 Commission (Medical Student Loan Program), is
35 authorized, with the following amendment:

36 On page two, subsection 5.1, following the words
37 “financial aid office” by inserting a new subdivision 5.1.3
38 to read as follows: “United States citizenship or legal

39 immigrant status while actively pursuing United States
40 citizenship.”.

41 (j) The legislative rule filed in the State Register on
42 December 1, 2008, relating to the Higher Education Policy
43 Commission (West Virginia Higher Education Grant
44 Program), is authorized.

45 (k) The legislative rule filed in the State Register on
46 January 26, 2009, relating to the Higher Education Policy
47 Commission (Accountability System), is authorized.

48 (l) The legislative rule filed in the State Register on May
49 20, 2009, relating to the Higher Education Policy
50 Commission (Energy and Water Savings Revolving Loan
51 Fund Program), is authorized.

52 (m) The legislative rule filed in the State Register on
53 January 27, 2010, relating to the Higher Education Policy
54 Commission (Providing Real Opportunities for Maximizing
55 In-state Student Excellence - PROMISE), is authorized.

56 (n) The legislative rule filed in the State Register on
57 December 8, 2010, relating to the Higher Education Policy
58 Commission (authorization of degree-granting institutions),
59 is authorized, with the following amendment:

60 On page 28, subsection 9.1.b, following the words
61 “Good cause shall consist of” by inserting the words “any
62 one or more of the following”.

63 (o) The legislative rule filed in the State Register on
64 December 12, 2011, relating to the Higher Education Policy
65 Commission (Tuition and Fee Policy), is authorized.

66 (p) The legislative rule filed in the State Register on
67 August 10, 2012, relating to the Higher Education Policy
68 Commission (authorization of degree-granting institutions),
69 is authorized.

- 70 (q) The legislative rule filed in the State Register on
71 August 10, 2012, relating to the Higher Education Policy
72 Commission (annual reauthorization of degree-granting
73 institutions), is authorized.
- 74 (r) The legislative rule filed in the State Register on
75 March 20, 2013, relating to the Higher Education Policy
76 Commission (Human Resources Administration), is
77 authorized.
- 78 (s) The legislative rule filed in the State Register on
79 January 24, 2014, relating to the Higher Education Policy
80 Commission (Capital Project Management), is authorized.
- 81 (t) The legislative rule filed in the State Register on
82 April 4, 2014, relating to the Higher Education Policy
83 Commission (Underwood-Smith Teacher Scholarship
84 Program), is authorized.
- 85 (u) The legislative rule filed in the State Register on
86 August 4, 2014, relating to the Higher Education Policy
87 Commission (Nursing Scholarship Program), is authorized.
- 88 (v) The legislative rule filed in the State Register on
89 October 28, 2015, relating to the Higher Education Policy
90 Commission (Underwood-Smith Teacher Scholarship
91 Program), is authorized.
- 92 (w) The legislative rule filed in the State Register on
93 October 28, 2015, relating to the Higher Education Policy
94 Commission (Nursing Scholarship Program), is authorized.
- 95 (x) The legislative rule filed in the State Register on
96 December 20, 2016, relating to the Higher Education Policy
97 Commission (West Virginia Higher Education Grant
98 Program), is authorized.
- 99 (y) The legislative rule filed in the State Register on
100 December 20, 2016, relating to the Higher Education Policy
101 Commission (Providing Real Opportunities for Maximizing
102 In-state Student Excellence - PROMISE), is authorized.

103 (z) The legislative rule filed in the State Register on
104 December 20, 2016, relating to the Higher Education Policy
105 Commission (Research Trust Fund Program), is authorized.

106 (aa) The legislative rule filed in the State Register on
107 December 20, 2016, relating to the Higher Education Policy
108 Commission (annual reauthorization of degree-granting
109 institutions), is authorized.

110 (bb) The legislative rule filed in the State Register on
111 January 16, 2018, relating to the Higher Education Policy
112 Commission (Tuition and Fee Policy), is authorized.

113 (cc) The legislative rule filed in the State Register on
114 January 16, 2018, relating to the Higher Education Policy
115 Commission (Human Resources Administration), is
116 authorized.

117 (dd) The legislative rule filed in the State Register on
118 January 22, 2018, relating to the Higher Education Policy
119 Commission (Capital Project Management), is authorized,
120 with the following amendments:

121 On page one, subsection 2.1, by striking out all of
122 subdivision 2.1.d. and inserting in lieu thereof a new
123 subdivision 2.1.d., to read as follows: “Efficient use of
124 existing classroom and other space by institutions, while
125 maintaining an appropriate deference to the value
126 judgments of the institutional governing boards”;

127 On page seven, subsection 4.2, by striking out all of
128 subdivision 4.2.d.5. and inserting in lieu thereof a new
129 subdivision 4.2.d.5., to read as follows: “Funding will be
130 prioritized for each institution in accordance with
131 institutional plans confirmed by the Commission or
132 approved by the Council.”;

133 On page seven, subsection 4.2, by striking out all of
134 subdivision 4.2.d.6. and inserting in lieu thereof a new
135 subdivision 4.2.d.6., to read as follows: “Facility utilization

136 rates will be an important factor in prioritizing capital
137 projects across the systems.”;

138 On page seven, subsection 4.2, by striking out all of
139 subdivision 4.2.d.7. and inserting in lieu thereof a new
140 subdivision 4.2.d.7., to read as follows: “Institutions with
141 overall net asset values and capacity utilization rates that
142 exceed or equal thresholds set annually by the Commission
143 and Council are the presumptive priority for new
144 facilities. If these projects do not replace an existing
145 facility, they would be included in the Program
146 Improvement category.”; and

147 On pages 10-11, section 5, by striking out all of
148 subdivision 5.6. and inserting in lieu thereof a new
149 subdivision 5.6., to read as follows: “A governing board
150 may not implement a campus development plan or plan
151 update that has not been confirmed by the Commission or
152 approved by the Council, as appropriate. The purchase of
153 any property for the construction of a facility that is not
154 included in the campus development plan creates an update
155 to the campus development plan that must be confirmed by
156 the Commission or approved by the Council, as appropriate,
157 prior to its purchase. In the case of institutions governed by
158 the Council, this provision applies equally to property
159 acquired by any means, whether by purchase or otherwise.”.

160 (ee) The legislative rule filed in the State Register on
161 January 22, 2019, relating to the Higher Education Policy
162 Commission (Acceptance of Advanced Placement Credit),
163 is repealed.

164 (ff) The legislative rule filed in the State Register on
165 January 22, 2019, relating to the Higher Education Policy
166 Commission (Human Resources Administration), is
167 repealed.

168 (gg) The legislative rule filed in the State Register on
169 August 28, 2018, relating to the Higher Education Policy

170 Commission (Guidelines for Governing Boards in
171 Employing and Evaluating Presidents), is authorized.

172 (hh) The legislative rule filed in the State Register on
173 August 7, 2018, relating to the Higher Education Policy
174 Commission (Providing Real Opportunities for Maximizing
175 In-state Student Excellence (PROMISE) Scholarship
176 Program), is authorized, with the following amendments:

177 On page one, subsection 2.1, by striking out all of
178 subdivision 2.1.a. and inserting in lieu thereof a new
179 subdivision 2.1.a., to read as follows: “Must complete high
180 school graduation requirements at a West Virginia public,
181 private or home school unless he or she qualified as a
182 military dependent under Section 5 of this rule, or has
183 commuted to an out-of-state school pursuant to Section 6 of
184 this rule; and”;

185 On page one, subsection 2.1, by striking out all of
186 subdivision 2.1.b. and inserting in lieu thereof a new
187 subdivision 2.1.b., to read as follows: “Must complete at
188 least one half of the credits required for high school
189 graduation through attendance at a public, private or home
190 school in this state, unless he or she qualified as a military
191 dependent under Section 5 of this rule, or has commuted to
192 an out-of-state school pursuant to Section 6 of this rule;
193 and”;

194 On page one, subdivision 2.1.c., by striking out the
195 words “Section 5” and inserting in lieu thereof the words
196 “Section 4”;

197 On page one, subsection 2.1, by striking out all of
198 subdivision 2.1.d. and inserting in lieu thereof a new
199 subdivision 2.1.d., to read as follows: “Must have attained
200 a cumulative grade point average of at least 3.0 on a 4.0
201 scale, based on county board grading policies, in both core
202 courses and overall coursework required for graduation by
203 the State Board of Education, while enrolled in a public or
204 private high school. If home-schooled pursuant to the

205 exemption allowed by W.Va. Code §18-8-1 as documented
206 by the county school board system, the applicant must have
207 completed in both the 11th and 12th grades the required core
208 and elective coursework necessary to prepare students for
209 success in postsecondary education at the associate and
210 baccalaureate levels by attaining a cumulative grade point
211 average of at least 3.0 on a 4.0 grading scale in both core
212 courses and overall coursework as determined by the
213 Commission; and”;

214 On page one, subsection 2.1, subdivision 2.1.f.,
215 preceding the words “have resided in West Virginia”, by
216 striking out the word “Must” and inserting in lieu thereof
217 the words “The applicant and his or her parent or legal
218 guardian must”;

219 On page one, subdivision 2.1.f., by striking out the
220 words “Section 5” and inserting in lieu thereof the words
221 “Section 4”;

222 On page one, subdivision 2.1.f., by striking out the
223 words “Section 6” and inserting in lieu thereof the words
224 “Section 5”;

225 On page two, subsection 2.4., by striking out the words
226 “Section 10.7 or 10.8” and inserting in lieu thereof the
227 words “Section 9.7 or 9.8”;

228 On page two, subsection 2.5, by striking out the words
229 “Section 8” and inserting in lieu thereof the words “Section
230 7”;

231 On page two, subsection 2.5, by striking out the words
232 “Section 10” and inserting in lieu thereof the words “Section
233 9”;

234 On page two, by striking out all of section 3 and
235 renumbering the remaining sections accordingly;

236 On page three, subsection 4.4, by striking out the words
237 “Section 14” and inserting in lieu thereof the words “Section
238 13”;

239 On page five-six, subsection 10.6, by striking out the
240 words “Section 10.3” and inserting in lieu thereof the words
241 “Section 9.3”;

242 On page six, subsection 10.6, by striking out the words
243 “Section 10.2” and inserting in lieu thereof the words
244 “Section 9.2”;

245 On page six, subsection 10.9.c., by striking out the
246 words “Section 5” and inserting in lieu thereof the words
247 “Section 4”; and

248 On page eight, subsection 15.1.b, by striking out the
249 words “Section 11.1” and inserting in lieu thereof the words
250 “Section 10.1”.

§18B-17-3. Authorizing rules of the Council for Community and Technical College Education.

1 (a) The legislative rule filed in the State Register on
2 September 29, 2004, relating to the West Virginia Council
3 for Community and Technical College Education
4 (performance indicators), is authorized.

5 (b) The legislative rule filed in the State Register on
6 October 13, 2005, relating to the West Virginia Council for
7 Community and Technical College Education
8 (authorization of degree-granting institutions), is
9 authorized.

10 (c) The legislative rule filed in the State Register on
11 October 30, 2006, relating to the West Virginia Council for
12 Community and Technical College Education (Workforce
13 Development Initiative Program), is authorized.

14 (d) The legislative rule filed in the State Register on
15 December 4, 2008, relating to the West Virginia Council for

16 Community and Technical College Education (Employing
17 and Evaluating Presidents), is authorized.

18 (e) The legislative rule filed in the State Register on
19 December 23, 2008, relating to the West Virginia Council
20 for Community and Technical College Education
21 (performance indicators), is authorized.

22 (f) The legislative rule filed in the State Register on
23 February 5, 2009, relating to the West Virginia Council for
24 Community and Technical College Education (finance), is
25 authorized.

26 (g) The legislative rule filed in the State Register on
27 February 5, 2009, relating to the West Virginia Council for
28 Community and Technical College Education
29 (Accountability System), is authorized.

30 (h) The legislative rule filed in the State Register on
31 June 15, 2011, relating to the West Virginia Council for
32 Community and Technical College Education (Workforce
33 Development Initiative Program), is authorized.

34 (i) The legislative rule filed in the State Register on
35 October 26, 2011, relating to the West Virginia Council for
36 Community and Technical College Education (Tuition and
37 Fees), is authorized.

38 (j) The legislative rule filed in the State Register on
39 October 17, 2012, relating to the West Virginia Council for
40 Community and Technical College Education
41 (authorization of degree-granting institutions), is
42 authorized.

43 (k) The legislative rule filed in the State Register on
44 October 17, 2012, relating to the West Virginia Council for
45 Community and Technical College Education (annual
46 reauthorization of degree-granting institutions), is
47 authorized.

48 (l) The legislative rule filed in the State Register on
49 March 21, 2013, relating to the West Virginia Council for
50 Community and Technical College Education (Human
51 Resources Administration), is authorized.

52 (m) The legislative rule filed in the State Register on
53 August 21, 2012, relating to the West Virginia Council for
54 Community and Technical College Education (West
55 Virginia EDGE Program), is authorized.

56 (n) The legislative rule filed in the State Register on
57 January 28, 2014, relating to the West Virginia Council for
58 Community and Technical College Education (Capital
59 Project Management), is authorized.

60 (o) The legislative rule filed in the State Register on
61 January 18, 2017, relating to the West Virginia Council for
62 Community and Technical College Education (annual
63 reauthorization of degree-granting institutions), is
64 authorized.

65 (p) The legislative rule filed in the State Register on
66 January 18, 2017, relating to the West Virginia Council for
67 Community and Technical College Education (Business,
68 Occupational, and Trade Schools), is authorized.

69 (q) The legislative rule filed in the State Register on
70 January 26, 2018, relating to the West Virginia Council for
71 Community and Technical College Education (Human
72 Resources Administration), is authorized.

73 (r) The legislative rule filed in the State Register on
74 January 26, 2018, relating to the West Virginia Council for
75 Community and Technical College Education (Capital
76 Project Management), is authorized, with the following
77 amendments:

78 On page one, subsection 2.1, by striking out all of
79 subdivision 2.1.d. and inserting in lieu thereof a new

80 subdivision 2.1.d., to read as follows: “Efficient use of
81 existing classroom and other space by institutions, while
82 maintaining an appropriate deference to the value
83 judgments of the institutional governing boards.”;

84 On page seven, subsection 4.2, by striking out all of
85 subdivision 4.2.d.5. and inserting in lieu thereof a new
86 subdivision 4.2.d.5., to read as follows: “Funding will be
87 prioritized for each institution in accordance with
88 institutional plans confirmed by the Commission or
89 approved by the Council.”;

90 On page seven, subsection 4.2, by striking out all of
91 subdivision 4.2.d.6. and inserting in lieu thereof a new
92 subdivision 4.2.d.6., to read as follows: “Facility utilization
93 rates will be an important factor in prioritizing capital
94 projects across the systems.”;

95 On page seven, subsection 4.2, by striking out all of
96 subdivision 4.2.d.7. and inserting in lieu thereof a new
97 subdivision 4.2.d.7., to read as follows: “Institutions with
98 overall net asset values and capacity utilization rates that
99 exceed or equal thresholds set annually by the Commission
100 and Council are the presumptive priority for new
101 facilities. If these projects do not replace an existing
102 facility, they would be included in the Program
103 Improvement category.”; and

104 On pages 10-11, section 5, by striking out all of
105 subdivision 5.6. and inserting in lieu thereof a new
106 subdivision 5.6., to read as follows: “A governing board
107 may not implement a campus development plan or plan
108 update that has not been confirmed by the Commission or
109 approved by the Council, as appropriate. The purchase
110 of any property for the construction of a facility that is
111 not included in the campus development plan creates an
112 update to the campus development plan that must be
113 confirmed by the Commission or approved by the

114 Council, as appropriate, prior to its purchase. In the case
115 of institutions governed by the Council, this provision
116 applies equally to property acquired by any means,
117 whether by purchase or otherwise.”.

118 (s) The legislative rule filed in the State Register on July
119 2, 2018, relating to the West Virginia Council for
120 Community and Technical College Education (Tuition and
121 Fees), is authorized.

122 (t) The legislative rule filed in the State Register on
123 September 26, 2018, relating to the West Virginia Council
124 for Community and Technical College Education
125 (Acceptance of Advanced Placement Credit), is repealed.

126 (u) The legislative rule filed in the State Register on
127 November 20, 2018, relating to the West Virginia Council
128 for Community and Technical College Education (initial
129 authorization of degree-granting institutions), is authorized.

130 (v) The legislative rule filed in the State Register on
131 November 20, 2018, relating to the West Virginia Council
132 for Community and Technical College Education
133 (Workforce Development: Learn and Earn, Technical
134 Program Development, and West Virginia Advance Rapid
135 Response Grants), is authorized.

136 (w) The legislative rule filed in the State Register on
137 January 25, 2019, relating to the West Virginia Council for
138 Community and Technical College Education (Human
139 Resources Administration), is repealed.